Before the
Federal Communications Commission
Washington, D.C., 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	**WC Docket No. 07-245**
A National Broadband Plan for Our Future	)	**GN Docket No. 09-51**
	)	
	)	

ONCOR ELECTRIC DELIVERY COMPANY LLC'S INITIAL COMMENTS

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INITIAL COMMENTS

Oncor Electric Delivery Company LLC ("Oncor") respectfully submits these Initial Comments regarding certain aspects of the Further Notice of Proposed Rulemaking (*Implementation of Section 224 of the Act; A National Broadband Plan for our Future; Proposed Rule*)("FNPRM") in the above-referenced docket.

I. INTRODUCTION AND SUMMARY

Oncor, like many other pole owners, supports the Commission's intent to encourage broadband deployment. Oncor provides these comments to emphasize and enhance factual support for a single, overriding proposition: broadband deployment is a laudable goal, but must yield to the pole owners' focus on maintaining safe and reliable electric distribution networks.

As explained more fully below, some of the FNPRM's Proposed Rules are not objectionable.[1] Many, however, unnecessarily impede pole owners' ability to meet state-imposed obligations to protect the safety and reliability of their networks. Many are also inconsistent with an electric utility's right to deny access the statutory in 47 U.S.C. § 224(f)(2). Section 224(f)(2) mandates that electric utilities have the right to deny attachers access where insufficient capacity exists and "for reasons of safety, reliability and generally applicable engineering purposes."[2]

The proposed *access* rules to which Oncor objects (most notably those concerning make-ready issues set forth in Proposed Rules 1.1420, 1.1424, 1.1426(b)(1) – (3) and 1.1428) reflect a fundamental jurisdictional disconnect between what the FCC wants to do and what it ***can*** do. Regardless of the perceived urgency concerning rural broadband deployment, the Commission

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[1] Oncor only addresses specific objectionable Proposed Rules herein. Oncor's silence on certain proposed rules does not indicate that Oncor agrees with those proposals and Oncor reserves the right to so comment later in this proceeding. Oncor also adopts and incorporates herein the following sections from the Comments of the Edison Electric Institute and The Utilities Telecom Council filed today: VII and X.

[2] 47 U.S.C. § 224(f)(2).

"may not exercise its authority 'in a manner that is inconsistent with the administrative structure that Congress enacted into law.'"[3] Section 224(f) grants very limited jurisdiction to the Commission with regard to *access.* The Commission was never "empowered" with plenary authority over pole attachments.[4] Instead, its specific authority in access and make-ready issues has been narrowly confined by Congress and the Courts.[5] In short, the Commission cannot force upon pole owners "build-out" (or make-ready) rules. Proposed Rules 1.1420, 1.1424, 1.1426(b)(1) – (3) and 1.1428 purport to do just that and should be rejected.

The Commission should take a hard look at the actual record evidence in this proceeding. The reality is that attaching entities are using the "buzz" (and political momentum) of the National Broadband Plan ("NBP") to gain additional leverage in pole attachment relationships where they are already in an undeniably "favorable" position.[6] They have done so with little to no real evidence that there is either a problem with access for broadband deployment or that pole attachment reform will achieve the Commission's stated goals. In fact, in Texas and elsewhere broadband deployment is already approaching 100%.[7] In contrast, utilities have raised real

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[3] *Food and Drug Admin. v. Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 125, 120 S. Ct. 1291, 1297 (2000) (quoting *ETSI Pipeline Project v. Missouri,* 484 U.S. 495, 517, 108 S. Ct. 805, 817 (1988)).

[4] 47 U.S.C. § 224(b)(1); *see also* S. Rep. No. 95-580, at 14 (1977), *reprinted in* 1978 U.S.C.C.A.N. 109, 123 ("the Commission is not empowered to prescribe rates, terms, and conditions for CATV pole attachments generally. It may, however, issue guidelines to be used in determining whether the rates, terms, and conditions for CATV pole attachments are just and reasonable in any particular case.").

[5] *See* pp. 16-19 below.

[6] Congress has called the Cable Rate a "beneficial rate" intended to "spur the growth of the cable industry, which in 1978 was in its infancy." H.R. Rep. No. 104-204, at 91-92 (1995), *reprinted in* 1996 U.S.C.C.A.N. 10, 58; *see also* S. Rep. No. 95-580, 12-14, 1978 U.S.C.C.A.N., at 120-23. Mission accomplished. Today, the cable/telecommunications industry is comprised of some of the largest companies in the United States. *See also* AT&T's 3/27/00 Form 10-K (commenting on "the favorable pole attachment rates afforded cable operators under federal law . . .").

[7] As acknowledged by the Vice-President of Governmental Affairs and General Counsel of the Texas Cable Association in July, 2010: "[W]e can see that more than 99 percent of all Texans can access some form of broadband, whether wired, wireless or mobile, for more than 123 providers." Todd Baxter, *Baxter Texas broadband map shows national plan ill-conceived,* Ft. Worth Star-Telegram July 4, 2010, available at 2010 WLNR 13431993.

safety and reliability issues supported by hard data and compelling evidence. Reform of this magnitude should be grounded in real facts, not generalized rhetoric and anecdotal evidence.

Oncor does not seek to curtail the Commission's focus on broadband deployment. Oncor merely asserts that the evidence is that pole attachments are not the problem. In the areas of access, safety, and reliability, the FCC should acknowledge its jurisdictional limitations, exercise "great caution" and strike the right balance. [8] Simply because Congress gave the Commission "*some* authority to act" in the pole attachment arena, it does not "possess *plenary* authority."[9] With respect to pole access issues, the current system is not broken and does not need most of the Commission's proposed "fixes" in the FNPRM.

II. BROADBAND SERVICES ARE GROWING UNDER CURRENT, LIMITED FCC ACCESS REGULATION

The FNPRM proposes wide-sweeping pole attachment reform as a means to address a limited problem that pales in comparison to the detrimental impact of the proposed remedy. Specifically, the FNPRM assumes that broadband companies need strengthened pole access support to deploy their services. They do not. The record is utterly devoid of any proof that so-called barriers to pole access are causing the few unserved areas to remain without access to broadband services. There certainly is no evidence that areas unserved by broadband companies are having difficulty accessing the poles owed by Commission regulated pole owners (*i.e.*, investor-own utilities).

It is particularly illogical to conclude that make-ready issues are preventing rural broadband deployment. Although the FCC presumes that there are three attaching entities on poles in rural areas, Oncor's actual data shows that the number is approximately, on average

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[8] *American Library Assoc. v. FCC*, 406 F.3d 689, 702 (D.C. Cir. 2005).

[9] *Id.* at 708; *see also id.* at 701-02 (finding the FCC "had gone too far" in regulating taking actions "antithetical to a basic regulatory parameter").

2.3.[10] As such, there is likely a very small percentage of poles that would require make-ready (capacity expansion) as compared to urban areas (where the Commission presumes there are five attaching entities). Oncor's permit data demonstrates the point; from 2009 to date 2010, only 3.8% of the poles permitted require make-ready work.[11] If, under the current pole attachment regime, broadband has flourished in urban areas – with more crowded poles – it is nonsensical to claim that make-ready issues are slowing deployment in rural areas.

A. Broadband is Flourishing – Nationwide and in Texas

> "[W]e can see that more than 99 percent of all Texans can access some form of broadband, whether wired, wireless or mobile, from more than 133 providers."[12]

Broadband services are not being stymied by pole owners. Instead, as boasted by broadband companies themselves, broadband coverage is flourishing and households that want broadband service, with limited exceptions, can get it. For example, as far back as 2005, Comcast touted itself as the nations' leading provider of cable, entertainment and communications products and services with 21.5 million cable customers and more than 6.5 million high-speed Internet customers. According to Comcast:

> We will continue to differentiate our service in 2005 by introducing innovative built-for-broadband applications that leverage the power of our 100% Pure Broadband(TM) network and provide value in our six key customer areas of interest: communication, music, movies, gaming, sports and kids. ***This mirrors our successful 2004 strategy, which enabled us to set an industry record for customer growth as we began to showcase why 'it's not just speed but what you can do with it.'***[13]

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[10] See Declaration of Karen Flewharty, ¶ 7 (attached hereto as Exhibit "A").

[11] Flewharty Decl. at ¶ 22.

[12] FN 7, *Supra.*

[13] *See* Press Release, Comcast Enhances Broadband Service with New Speeds and More Apps for 2005, (last visited Aug. 16, 2010) http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=175.

Five years later, in April 2010, Comcast's broadband services are still growing. In the first quarter of 2010, "Comcast saw the number of broadband Internet customers rise 7 percent to 16.3 million and phone subscribers increase 16 percent to 7.8 million compared with the same period a year ago. ... Comcast also enjoyed a 3.4 percent gain in subscribers hopping onto its Triple Play service, which combines TV, Internet, and phone services in one package."[14] Comcast Chief Executive Brian Roberts stated: "Our healthy operating and financial results for the first quarter mark a solid start to 2010. ... First quarter results were driven by ***robust customer growth***, a rebound in advertising, momentum in Business Services, and our continued focus on expense and capital management."[15] Comcast is certainly not alone in this regard. Other attachers have reported similar growth.[16]

The experience in Texas is similarly promising and demonstrates that private and state efforts are successfully combining to close any remaining access gap in broadband service.[17] Texas broadband services are booming and reaching the far corners of the state. A recent study

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[14] *See* Lance Whitney, *Customer Growth Boosts Comcast Sales, Earnings,* CNET, Apr. 28, 2010, http://news.cnet.com/8301-1023_3-20003643-93.html.

[15] *Id.*

[16] *See, e.g.*, Time Warner Cable, Inc. 10-Q, Form 10-K 12/31/08, Part IV, Management's Discussion and Analysis of Results of Operations and Financial Condition (p. 51-52) ("As of December 31, 2008, TWC had approximately 8.4 million residential high speed data subscribers. TWC expects continued growth in residential high-speed data subscribers and revenues for the foreseeable future; however, the rate of growth of both subscribers and revenues is expected to slow over time as high-speed data services become ***increasingly penetrated***.") (emphasis added). Although generally mentioning that increased pole attachment costs could significantly increase TWC's costs (Form 10-K 12/31/09, Part I, Item 1A Risk Factors, p. 19), TWC does not identify pole attachments as a barrier to its expectation of continued growth in high-speed residential data subscribers.

[17] *AT&T Investing Nearly $1.25 Billion in Texas in 2007*, (October 2, 2007) ("AT&T last year completed its project to provide DSL capability to all of its central offices in the state and to offer broadband to many more rural customers. The company also announced the expansion of its satellite Internet service for rural customers beyond the reach of its central offices."); *Texas, TX High Speed Internet*, available at http://www.fiberopticinternet.com/providers/Texas-TX.php ("Stelera Wireless launched its high speed HSPA service in two rural areas in 2008. AT&T expanded its 3G network in 2008 and boosted its broadband service in 2009. Verizon also expanded its DSL service in 2009, making it available to a further 7,500 households. In December 2009, GUTC Communications launched the fastest service in South Texas, spending $35 million to bring its 40 mbps fiber optic cable to a further 31,000 customers.").

conducted by Connected Texas[18] revealed that 97% of Texas households have access to terrestrial fixed broadband service at rates of 768 kbps downstream and 200 kbps upstream (excluding mobile and satellite services).[19] **With mobile broadband service included, 99% of Texas households have access to broadband services.** Another source confirmed Connected Texas' data:

> The situation is improving, with large gaps in rural coverage for broadband internet services in 2000 being reduced to only some sparsely populated areas being without at least one broadband internet provider in 2007. It was estimated that 97% of Texas zip codes had at least four internet providers in 2007.[20]

Connected Nation, based on information from broadband providers themselves, concludes that other states are having similar success in expanding broadband coverage:[21]

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[18] Connected Texas, a subsidiary of Connected Nation, was commissioned by the Texas Department of Agriculture to work with all broadband providers in the state of Texas to create detailed maps of broadband coverage in order to accurately pinpoint remaining gaps in broadband availability in Texas. During the various hearings held by Congressional subcommittees regarding the NBP, Connected Nation has been referred to as "one of the nation's leaders" in broadband mapping. *See* Press Release, Connected Nation, *Connected Nation Testifies on Capitol Hill; Addresses Nation's Broadband Demand Gap* (March 13, 2010), *available at*:

http://connectednation.org/in_the_news/press_releases/index.php?id=tag:blogger.com,1999:blog-6442347486820590345.post-4440919283335607714 (last visited Aug. 16, 2010) (quoting various members of Congress applauding Connected Nation's "great work").

[19] *See* http://connectedtx.org/mapping/interactive_map.php.

[20] Fiberoptic Internet, Texas, TX High Speed Internet, *available at* http://www.fiberopticinternet.com/providers/Texas-TX.php.

[21] For its part, the Commission observed that estimated broadband penetration was 95%. *See Sixth Broadband Deployment Report,* 6N Docket No. 09-51, FCC 10-129, paragraph 20, n. 81. In 2006, the Government Accountability Office ("GAO") concluded that only about 9% of American households lack available broadband networks. The GAO cited a variety of factors, including, the broadband companies' consideration of both the "cost to deploy and operate a broadband network and the expected demand for broadband services."

State	% Households with Fixed Terrestrial Broadband (768 kbps downstream/200 kbps upstream)	Fixed + Mobile	Cite
Connect Florida.	**96.23%**	**99.80%**	http://www.connect-florida.org/
Connected Tennessee	**95.36%**	**99.37%**	http://www.connectedtennessee.org/
CONNECT IOWA.	**95.36%**	**99.37%**	http://connectiowa.org/
CONNECT KANSAS	**97.23%**	**99.55%**	http://www.connectkansas.org/
CONNECT Michigan.	**95.41%**	**99.64%**	http://www.connectmi.org/
CONNECT Minnesota.	**95.55%**	**99.3%**	http://www.connectmn.org/
Connect Nevada	**97.29%**	**99.48%**	http://www.connectnv.org/
connect south carolina.	**95.32%**	**99.70%**	http://www.connectsc.org/

As the Texas Cable Association itself concludes:

> [N]ewly released maps show that broadband - - high speed Internet - - is widely available in Texas . . . more than 99% of all Texans can access some form of broadband.[22]

B. Pole Attachment Access Does Not Inhibit Broadband Deployment to Unserved Areas

For the 3% of Texas households that do not have terrestrial fixed broadband access, Connected Texas targeted the Federal government and broadband companies themselves as responsible for the lack of deployment. Apparently, a dozen projects in Texas have received more than $172 million in grants and almost $96 million in loans.[23] The Texas Cable Association complained that federal tax dollars are being used in areas already served by broadband providers.[24] "The federal government put the cart before the horse," said Todd Baxter, a cable lobbyist.[25] "It should have mapped broadband availability before granting billions of dollars in funding."[26] John Bradford, the business development manager with the Valley Telephone Cooperative, said the co-op is using $78 million in loans and grants to bring broadband access to 53,000 people in a dozen communities across 1,600 square miles of South Texas.[27] Bradford said other providers, including cable companies, have provided little or no

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22 *See* FN 12, *supra.*

23 *See* Laylan Copeland, *Broadband map shows the bare spots in Texas*, American Statesman, June 17, 2010, http://www.statesman.com/business/broadband-map-shows-the-bare-spots-in-texas-752424.html.

24 *Id.*

25 *Id.*.

26 *Id.*

27 *Id.*

broadband service to the sparsely populated areas.[28] ***These business decisions made by broadband providers have nothing to do with pole attachment access rules.***[29]

On May 13, 2010, Connected Nation's Chief Policy Officer, Laura Taylor, addressed the U.S. House Committee on Energy and Commerce's Subcommittee on Communications, Technology and the Internet about the importance of increasing broadband adoption (*i.e.*, demand for use) to spur broadband expansion.[30] Taylor testified:

> Our experience, and the data that go along with it, show that the nation's 'demand gap' is significantly larger than the 'supply gap' – with supply outstripping demand by between 30 and 35 percentage points. ***Broadband adoption stimulation is the key to the ultimate success of any effort to fully address the broadband challenge.***[31]

Of the Texas households that have broadband access, only 62% have "adopted" using broadband connections.[32] Cost, the lack of a computer, and lack of knowledge about how to use the services were identified as some of the hurdles to broadband adoption in areas where broadband is available.[33] These appear to be issues in other states as well.[34] Again, these demand-side

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28 *Id.*

29 *Id. See also* Connected Nation, Inc. Comments on a National Broadband Plan for Our Future, GN Dkt. No. 09-51, p. 20 (June 6, 2009) ("Faced with these demand-side issues that are beyond the narrow confines of the telecommunications sector, it is natural to expect that private investors will not build or upgrade broadband infrastructure as quickly in areas where there is expected to be low penetration (or "take rates") due to these demographic, education, and income characteristics.").

30 *See* FN 12, *supra*; *see also* Prepared Testimony of Connected Nation Chief Policy Officer, p. 3, *available at*: http://connectednation.com/_documents/20100511CNCommitteeTestimonyFINAL.pdf.

31 *Id.*

32 *See* FN 23, *supra*. (http://www.statesman.com/business/broadband-map-shows-the-bare-spots-in-texas-752424.html).

33 *Id.*

34 *See* Connected Nation, Inc. Comments on a National Broadband Plan of Our Future, GN Dkt. No. 09-51, pp. 15-22 (June 6, 2009).

issues can neither be blamed on electric utility pole owners nor addressed through additional pole attachment regulation.[35]

In 2006, the Government Accountability Office ("GAO") concluded that only about 9% of American households lacked available broadband networks.[36] The GAO cited a variety of factors, including the broadband companies' consideration of both the "cost to deploy and operate a broadband network *and the expected demand for broadband services.*"[37]

The Commission should be careful not to "put the cart before the horse" (as cautioned by a ***cable*** lobbyist). There is little to no ***real evidence*** in this docket demonstrating that there is a problem with broadband deployment at all, let alone a problem created by pole attachment access. There is certainly no problem in Texas. There is no evidence that pole attachment access is a barrier to the supply-side issues (which are not even the primary problem) or that the proposed wide-sweeping reform heaped upon *some* pole owners will assist in meeting the Commission's goal.

Pole attachment access regulation will not change the economic decision of where broadband providers deploy their services, and will not address the consumer's demand-side issues. The providers' decisions are profit driven and based on customers per mile – not minimal make-ready costs. Stated alternatively, 97-99% of Texas households have access to broadband services under the existing pole attachment practices. How then are those same practices somehow major obstacles slowing deployment to the remaining 1-3%? They are not.[38]

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[35] In its comments filed in this docket, Connected Nation observed that "this data indicates that network availability or supply-side constraints, are not the only or primary barrier to adoption of broadband servicers." *Id.* at p. 17.

[36] *Id.* at p. 16.

[37] *Id.* (emphasis in the original).

[38] Oncor is aware of the following projects in its service area that (1) have already been funded (through American Recovery and Reinvestment Act stimulus money) and (2) are targeted toward further rural

III. ONCOR'S OBLIGATIONS AS AN ELECTRIC SERVICE PROVIDER

Oncor, is a public utility company distributing and transmitting electric service in more than 400 cities and 91 counties in Texas, nearly half of the state's geographic area.[39] Oncor's current service area includes the Dallas-Fort Worth metro area, as well as Odessa, Midland, North Austin, Round Rock, Killeen, Waco, Wichita Falls and Tyler.[40] Oncor operates the largest distribution and transmission system in Texas, providing power to 3 million homes (more than 7 million customers) and thousands of businesses over more than 116,000 miles of transmission and distribution lines in Texas.[41] Oncor owns approximately 2 million distribution poles, with approximately 1.2 million poles (60%) having at least one communications attachment.[42] Oncor is attached to approximately 400,000 poles owned by other entities. Oncor has 177 foreign attachers.

A. Oncor Must Focus on Safety and Reliability

Oncor's core business and regulatory mandate is to provide safe and reliable electric service to its customers. Oncor is neither in the pole rental business nor an on-demand make-ready communications contractor. Foreign attachments on Oncor's poles have a substantial

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broadband deployment: (a) Level 3 EON, LLC will spend $4,677,788 building 17 new access points on its existing network to enable last mile providers to offer affordable high-speed services to underserved areas; potentially reaching 400,000 new homes; (b) PRIDE Network, Inc., will spend $21,829,549 constructing an FTTP telecommunications infrastructure that will bring advanced broadband to rural communities with the Texas South Plans region; and (c) PRIDE Networks, Inc., will also spend $6,309,931 bringing advanced broadband services to rural communities in Burkburnett and Iowa Park, Texas. Similar stimulus projects are planned for Allegiance Communications (more than 680 miles of new fiber in 35 communities in underserved areas in Arkansas, Kansas, Oklahoma and Texas) and Wes-Ter Telephone Cooperative (targeting rural areas of West Texas). Flewharty Decl. at ¶ 8.

39 *See* Flewharty Decl. at ¶ 5. For detailed information regarding Oncor, see www.oncor.com.

40 *Id.*

41 *Id.*

42 *Id.*

impact on Oncor's system and its ability to meet its service obligations.[43] While Oncor considers foreign attachers to be its customers, and makes every effort to accommodate them, conflicts can – and sometimes do – arise when balancing Oncor's electric service obligations (provision of a safe and reliable distribution network) with the attachers' desire for speed-to-market. While attachers, and the Commission (as expressed in the FNPRM and NBP), place much emphasis on getting to market as quickly as possible (while downplaying or ignoring the risk and liability placed on the electric distribution network), speed to market cannot be achieved at the expense of the safety and reliability of critical electric infrastructure.

While "safety" and "reliability" overlap, they also implicate different concerns. "Safety" focuses on the protection of Oncor's employees, attachers, contractors and the general public. "Reliability" obligations and concerns relate to the standards Oncor is required to meet. For example, while performance of certain work may present little immediate safety threat on a given day, the work quality (or lack thereof), may create a threat to the general public and the reliability of Oncor's services which will not be apparent until a subsequent date. When addressing "safety" and "reliability," it is appropriate to consider the various implications conjunctively, as well as individually.

As the Commission has recognized, electric utility pole owners "are typically disinterested parties with only the best interest of the infrastructure at heart."[44] Communications attachers, on the other hand, "wish to roll out services as quickly as possible, and consequently,

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[43] In 2004, after finding excessive code violations during its permitting process, and a high number of unauthorized attachments in a 2002-2003 pole count, Oncor launched a Safety and Compliance Audit. From April, 2004 to March, 2006, Oncor inspected 102,458 poles with attachers. *See* Initial Comments of Oncor Electric Delivery Company, WC Docket No. 07-245, pp. 10-12 and Exhibit B, ¶¶ 14-19 (March 7, 2008). Safety/Code violations rates for attachers ranged from a low of 17% to a high of 44%, with an average of 30%. *Id.* Of the 102,548 poles inspected, violations of the NESC and/or Oncor's specifications were found on 30,764 poles. *Id.* Of the violations found, 48,547 (92.6%) were created by various attachers. *Id.* In contrast, only 3,857 (7.4%) were created by Oncor. Utilities' concerns regarding the negative impact attachers have on their poles are real.

[44] FNPRM, ¶ 31.

do not have the same incentives to maintain the safety and reliability of the infrastructure."[45] For these reasons alone, the Commission should give great weight to the electric utility pole owners' evidence and arguments in this docket and much less weight to the attachers' positions. Thus far, it appears to have been just the opposite.[46]

B. Texas Specific Safety and Reliability Standards

Oncor must comply with the safety and reliability standards established by the Public Utility Commission of Texas ("PUCT"). The PUCT has adopted Substantive Rules Applicable to Electric Service Providers ("PUCT Rules"). The PUCT Rules require that "[e]very utility ***shall*** make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time."[47] In order to ensure that utilities, such as Oncor, meet the PUCT's reliability standards, the PUCT Rules provide that "[e]ach utility ***shall*** maintain adequately trained and experienced personnel throughout its service area so that the utility is able to fully and adequately comply with the service quality and reliability standards."[48]

The PUCT has also established specific reliability requirements. The PUCT Rules require each utility to maintain and operate its electric distribution system so that its System

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[45] *See* Order and Further Notice of Proposed Rulemaking, FCC 10-84 (released May 20, 2010), ("Order and FNPRM"), ¶ 67.

[46] *In Re Applications of Airtouch Communications, Inc. Transferor, and Vodafone Group, Plc. Transferee*, 14 F.C.C. Rcd. 9430, 9465 (1999) (criticizing agency decisionmaking where the appearance is that decision adopted provisions that unfairly impact some groups, but not others: "While obviously troublesome on an intuitive level, the wholly ad hoc nature of this process makes it all too easy for decisionmakers to discriminate among industries and even companies - in other words, to engage in arbitrary and capricious review.... Specifically, when the Commission subjects some parties to a novel, extended, and unwieldy process to which it has not subjected similarly situated applicants, a reasonable person might think that the decisionmakers possessed a bias -- a bias manifesting itself in the especially high and numerous procedural hoops through which the decisionmakers were forcing the companies to jump.").

[47] Texas Administrative Code ("TAC"), Title 16, Part II, Chapter 25, Subchapter D, §25.52(b)(1) (emphasis added).

[48] 16 TAC §25.52(b)(4) (emphasis added).

Average Interruption Frequency Index ("SAIFI") and System Average Interruption Duration Index ("SAIDI") values (basically how often Oncor experiences interruptions and how long those interruptions last) shall not exceed Oncor's system-wide SAIFI or SAIDI (based on averages of the utility's performance for the previous 3 years) standard by more than 5%.[49] If Oncor fails to meet such reliability standards, it is subject to PUCT fines. Each year, the PUCT provides a penalty matrix reflecting the amounts to be assessed for failure to meet the PUCT-mandated reliability standards.[50] The matrix contains penalties for system-wide violations, as well as per feeder violations.[51] For example, a $16,000 penalty is assessed for a system-wide violation of SAIDI standards for the reporting year and $25,000 for consecutive years.[52] The same amount is assessed for a system-wide failure to meet SAIFI requirements.[53] A per feeder violation is also assessed (ranging from $500-$25,000 per feeder, depending on whether it is a first violation) for failure to meet SAIDI and SAIFI requirements.[54]

C. Texas Storm Hardening Docket

In addition to the requirements set forth above, the PUCT has opened a rulemaking regarding storm hardening: Rulemaking for Utility Infrastructure Storm Hardening (the "Storm Hardening Docket").[55] The Storm Hardening Docket seeks to impose forward-looking reporting requirements concerning electric utility efforts to harden the Texas grid against significant weather events (*e.g.*, hurricanes, as well as ice-loading issues). Recognizing the impact foreign

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49 16 TAC § 25.52(f).

50 *See* Flewharty Decl. at ¶ 10.

51 *Id.*

52 *Id.*

53 *Id.*

54 *Id.*

55 *See* Rulemaking for Utility Infrastructure Storm Hardening, Project No. 374575; *see also* 16 TAC §25.94 and §25.95.

attachers have on utility poles, the new PUCT Rules implemented pursuant to the Storm Hardening Docket include an obligation to report on "[p]ole construction standards, pole attachment policies, and pole testing schedule."[56]

As part of the Storm Hardening Docket, PUCT Rules also require that all utilities file with the PUCT a summary of its Storm Hardening Plan by May 1, 2011.[57] The summary must "describe in detail the utility's current and future storm hardening plans over a five-year period beginning January 1, 2011."[58] By May 1st of each subsequent year, the utility must "file a detailed summary of any material revisions to the Plan and a detailed summary of its progress in implementing the Plan."[59] The detailed summary must include massive amounts of materials and information including without limitation:

> (1) construction standards, policies, procedures, and practices employed to enhance the reliability of utility systems, including overhead and underground transmission and distribution facilities;
>
> (2) vegetation management plans;
>
> (3) plans and procedures to consider infrastructure improvements for its distribution system based on smart grid concepts that provide enhanced outage resilience, faster outage restoration, and/or grid self-healing;
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> (4) plans and procedures to enhance post storm damage assessment;
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> (5) transmission and distribution pole construction standards, pole attachment policies, and pole testing schedule;
>
> (6) inspection schedules;

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56 16 TAC § 25.95(e)(5).

57 16 TAC § 25.95(d).

58 *Id.*

59 *Id.*

> (7) plans and procedures for use of structures owned by other entities in the provision of distribution service, such as poles owned by telecommunications utilities; and
>
> (8) plans and procedures for restoration of service to priority loads and for consideration of targeted storm hardening of infrastructure used to serve priority loads.[60]

These requirements are meant "to ensure that each electric utility has developed a Storm Hardening Plan that provides for the implementation of cost-effective strategies to increase the ability of its transmission and distribution facilities to withstand extreme weather conditions."[61]

IV. THE FNPRM'S PROPOSED ACCESS RULES EXCEED THE COMMISSION'S JURISDICTION

The Act gives the Commission limited regulatory authority over narrowly defined categories of attachments. There is no general – or plenary – grant of authority over all aspects of pole attachments.[62] Particularly in the area of access issues, the Commission's authority is limited.[63]

The FNPRM proposes several new make-ready rules, including a specific timeline for access to poles, ducts, conduits and rights-of-way.[64] It also proposes mandated use of approved contractors if the pole-owning utility is unable to complete the necessary make-ready within the

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60 16 TAC § 25.95(e) (emphasis added).

61 16 TAC § 25.95(a).

62 S. Rep. No. 95-580, at 1 (1977), *reprinted in* 1978 U.S.C.C.A.N. 109, 123 ("the Commission is not empowered to prescribe rates, terms, and conditions for CATV pole attachments generally. It may, however, issue guidelines to be used in determining whether the rates, terms, and conditions for CATV pole attachments are just and reasonable in any particular case.").

63 47 U.S.C § 224 (f)(1). The nondiscriminatory standard is very different than the Commission's "just and reasonable" standard applicable to pole attachment "rates, terms and conditions." 47 U.S.C. § 224(b)(1). The Commission must recognize these separate, distinct standards. *Nat'l Treasury Employees Union v. Chertoff*, 452 F.3d 839, 856, 864-65 (D.C. Cir. 2006) ("An agency construction of a statute cannot survive judicial review . . . if a contested regulation reflects an action that is inconsistent with the agency's authority."); *see also* FN 5, *supra.*

64 FNPRM, Proposed Rule § 1.1420.

proposed timeline.[65] With respect to the proposed make-ready rules, the Commission is in danger of going "too far" and should exercise "[g]reat caution."[66] Section 224(f)(2) gives electric utility pole owners the unequivocal right to refuse to expand its facilities where there is insufficient capacity. Make-ready is the process by which a pole with insufficient space (a/k/a capacity) is either rearranged or changed-out to facilitate access for an additional attachment. On its face, the Act precludes forced make-ready. By attempting to regulate the make-ready process, the FNPRM proposes mandating capacity expansion (make-ready) – a subject the Commission has no authority to regulate.[67]

In *Southern Co. v. FCC*, the Eleventh Circuit expressed the foregoing, common sense statutory construction. In overturning a Commission ruling that required utilities to expand capacity to meet requests for new attachments, the Court stated:

> While the FCC is correct that the principle of non-discrimination is the primary purpose of the 1996 Telecommunications Act, we must construe statutes in such a way to 'give effect, if possible, to every clause and word of a statute.' ***Section 224(f)(2) carves out a plain exception to the general rule that a utility must make its plant available to third-party attachers.*** ... By attempting to extend those generally applicable rules into an area where the statutory text clearly directs that they not apply, the FCC is subverting the plain meaning of the Act.[68]

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[65] FNPRM, Proposed Rule § 1.1420(f).

[66] *See American Library*, 406 F.3d at 701-02 (the FCC went "too far" in acting "antithetical to a basic regulatory parameter").

[67] It appears that the Commission recognizes this obstacle and has attempted to overcome it by redefining the term "insufficient capacity" in the August 3, 2010 Order in this docket. 75 Fed. Reg. 148, ¶¶ 14-16 (2010). In this regard, the Order is similarly *ultra vires*.

[68] *Southern Co. v. FCC*, 293 F.3d 1338, 1346-47 (2002) (internal citations omitted) (emphasis added).

The Court went on to state that **"[t]*he FCC's attempt to mandate capacity expansion is outside of the purview of its authority under the plain language of the statute.*"**[69] Under this controlling precedent, the FCC simply cannot implement "forced build-out rules."[70]

There is "nothing in the [Act], its legislative history, the applicable case law, or agency practice indicating that Congress meant to provide the sweeping authority the FCC now claims" it may have over the make-ready process. "As the Supreme Court has reminded us, Congress 'does not . . . hide elephants in mouseholes.'"[71] Here, Congress never intended for the Commission to micromanage pole access, safety, reliability or engineering. Congress never envisioned electric utilities being thrust into being on-demand general (*i.e.*, "coordinating") contractors for communications companies.

If the Commission lacks jurisdiction to mandate make-ready, it would equally be "subverting the plain meaning of the Act"[72] to tell electric utilities (1) when to perform make-ready; (2) how quickly to perform it; (3) who can do it; (4) how and when to get paid for it; and (5) to accept a new coordinating role in the make-ready process. Respectfully, Proposed Rules 1.1420, 1.1424, 1.1426 (b)(1)-(3), and 1.1428 are beyond the Commission's statutory authority (or *ultra vires*) and should be rejected.[73] The Commission should leave everyday access issues

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[69] *Id.* at 1347 (emphasis added).

[70] *Ala. Power Co. v. FCC,* 311 F.3d 1357, 1363, n.8 (11th Cir. 2002) (describing the *Southern Co.* decision as finding FCC rules that were designed to "force [] power companies to enlarge pole capacity at the request (and expense) of attaching cable and telecommunications companies" were "forced build-out rules" and, therefore, "*ultra vires.*").

[71] *American Library*, 406 F.3d at 704. (quoting *Whitman v. Am. Trucking Assn's*, 531 U.S. 457, 468, 149 L.Ed 2d 1, 121 S. Ct. 903 (2001)).

[72] *Southern Co.,* 293 F.3d at 1347.

[73] "An agency construction of a statute cannot survive judicial review if a contested regulation reflects an action that exceeds the agency's authority. It does not matter whether the unlawful action arises because the disputed regulation defies the plain language of a statute or because the agency's construction is utterly unreasonable and thus impressible." *American Library,* 406 F.3d at 699 (quoting *Aid Ass'n for Lutherans v. United States Postal Serv.,* 321 F.3d 1166, 174 (D.C. Cir. 2003)). *See Brown & Williamson Tobacco Corp.,* 529 U.S. at 125 ("Regardless of how serious a problem an administrative agency seeks to address, however, it may not exercise

in the hands of the electric utility pole owners and private negotiated contracts subject to the Commission's review, on an *ad hoc* basis, of whether a pole owner is discriminating.[74]

V. THE PROPOSED FIVE STAGE MAKE-READY TIMELINE IS, IN MOST RESPECTS, UNLAWFUL AND UNWORKABLE

The FNPRM's five stage make-ready timeline is unneeded. Based on Oncor's experience, attachers are granted access and make-ready is performed in a timely manner. Since 2000, Oncor has permitted attachments to 251,673 poles – an amount that equates about 21% of its jointly occupied pole inventory.[75] On average, Oncor is processing permits that allow attachments to over 25,000 poles per year (or 481 poles per week). Oncor also understands its attachers' desire to get to market as quickly as possible and strives to help its attachers meet their goals. Oncor does not compete with its communications attachers.[76] As the Commission noted, electric utilities are "disinterested" in the competition raging among its various attachers and have no incentive to delay deployment of communications services.[77] Oncor simply wants things done right in "the best interest of the infrastructure." Where issues arise, Oncor works with its attachers to find solutions.

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its authority single 'in a manner that is inconsistent with the administrative structure that Congress enacted into law.'"); *Brown & Williamson Tobacco Corp. v. FDA*, 153 F.3d 155, 176 (4th Cir. 1998)("neither federal agencies nor the courts can substitute their policy judgments for those of Congress . . . . By its *ultra vires* action, the [agency] has exceeded the authority granted to it by Congress, and its rulemaking action cannot stand"); *Nat'l Treasury Employees Union*, 452 F.3d at 856 ("An agency construction of a statute cannot survive judicial review . . . if a contested regulation reflects an action that is inconsistent with the agency's authority.").

[74] This is in keeping with the Commission's historic preference for private negotiations and its recognition that "no single set of rules can take into account all of the issues that can arise in the context of a single installation or attachment." Order and FNPRM, ¶ 24 (citing *Local Competition Order*, 11 F.C.C.R. at 16068, ¶ 1145); *Amendment of Commissions Rules and Policies Concerning Pole Attachments; Implementation of Section 703 (e) of the Telecommunications Act of 1996, Consolidated Partial Order on Reconsideration,* ¶ 10, CS Docket Nos. 97-98 and 97-151, FCC 01-170 (2001); *see also* S. Rep. No. 95-580, at 14 (1977), *reprinted in* 1978 U.S.C.C.A.N. 1109, 123 (noting the FCC's jurisdiction is limited to review of "any particular case").

[75] Flewharty Decl. at ¶13.

[76] *Id.* at ¶ 11.

[77] FNPRM, ¶ 31. Communications attachers, however, have "strong incentives to frustrate and delay attachment" by their competitors. *Id.* As such, the Commissions Proposed Rules aim at the wrong entities.

The FNPRM makes much of the fact that a ***few*** states – only five of the twenty that have opted out of FCC jurisdiction – have make-ready deadlines. Tellingly, however, even this ***minority*** approach lacks uniformity. Instead, the deadlines reflect localized thinking concerning the safety and reliability of pole networks. There is also an eye toward flexibility in some of the state regulations. For example, Utah and Vermont adjust their survey deadlines, comparable to the FNPRM's Stage 1, according to the scope of the permit and the size of the utility. The variation in the handful of states that have delved into make-ready timelines demonstrates how one size does not fit all. Here, the Commission should maintain the *status quo* and allow utilities to determine, on a project-by-project basis, what works best.

General make-ready deadlines are unworkable and will create more problems than they solve. There is no record proof of any real (let alone widespread) make-ready problem. The proposed make-ready deadlines should be rejected. Should the Commission, nonetheless, choose to implement make-ready rules, Oncor offers the following comments with respect to each of the five stages of the proposed make-ready timeline.

A. Proposed Rules 1.1403(b) and 1.1420(b) – Stage 1 (Survey)

There is no credible record evidence substantiating a claim that electric utility pole owners are not responding to permit applications within the current time limit imposed by Rule 1.1403(b). For its part, in 2009 through year-to-date 2010, Oncor responded to permit applications on average within 37 days.[78] A survey conducted by The Utilities Telecom Counsel ("UTC") noted that among the eighty-five responding pole owners, 81% of all applications are processed within 45 days.[79] The real evidence is that there is no problem with

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[78] Flewharty Decl. at ¶ 13.

[79] *The Problem With Pole Attachments, A Survey Report By UTC* (2007), p. 13.

electric utility pole owners' permit processes and there is no need for Proposed Rules 1.1430(b) and 1.1420(b).

Although attachers commonly portray the access process as "simple" with little risk or burden placed on the pole owner, that is not the case. In reality, the access process is much more complicated as it involves, among other things, permit submission, permit review, engineering analysis, and pre-inspection/field surveys. After access is granted, post-inspections and periodic audits/counts are also required. The process is further complicated by the high number of non-compliant third-party attachments and the overwhelming (and continually increasing) number of unauthorized attachments threatening public safety and the reliability of the electric infrastructure.[80]

The Commission previously agreed that the "number of variables make it impossible to identify and account for them all for purposes of prescribing uniform standards and requirements."[81] The number of variables electric utilities face has increased since that pronouncement making the logic even more compelling. There is no justification for the Commission now reversing field.

Oncor would not object to the proposed revision to Rule 1.1403(b) and the associated changes to Rule 1.1420(b), so long as the Commission "leave[s] the details of the application process in the hands of individual parties."[82] The details allow the electric utility to manage the fact-intensive nature of the access process that begins with the permit.[83]

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80 *See* pp. 48-51.

81 *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499, ¶ 1149 (released Aug. 8, 1996).

82 FNPRM, ¶ 5.

83 *See* Order and FNPRM, ¶ 22 (recognizing the "fact-intensive nature of many" disputes).

The details of the application process are many, and the impact various issues can have on turnaround time can vary greatly. The Commission seeks comment on whether requests involving a "particularly large number of poles should be exempted" or "subject to an alternative timeline."[84] The FNPRM also mentions as options "access on a rolling basis" and "capping the number of attachments in a given period."[85] These variables can be impacted by differing state and local requirements, terrain, weather and supply issues. All of these may be applicable in differing situations where the permit covers a large number of poles, different types of attachments and different geographical issues.[86] Instead of trying to conceive of every potential scenario, the Commission should continue to allow parties to negotiate and enforce contractual terms and course of dealings in this area.

Oncor's standard attachment agreements limit permit applications to no more than 10 applications within thirty days (with collectively no more than 120 poles).[87] Also, attachers must prioritize applications when submitting more than one.[88] These procedures, in conjunction with current Rule 1.1403(b), have been working for more than 15 years.[89] For significant projects or urgent requests, Oncor has worked with attaching entities to develop staged submissions and other custom protocols.[90]

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84 FNPRM, ¶ 12.

85 FNPRM, ¶ 14.

86 The UTC Survey noted that for the relatively few permits that take over 45 days to process, 30% were due to the size of the project, 28% to the volume of applications, 23% to errors in the application, 8.5% to survey, inspection issues, and the remaining due to either the type of attachment or other factors. *See* UTC Survey, pp. 1-13.

87 Flewharty Decl. at ¶ 14.

88 *Id.*

89 *Id.*

90 *Id.* at ¶ 15.

B. Proposed Rule 1.1420(c) – Stage 2 (Estimate)

Oncor typically provides the make-ready estimate along with the permit response within the 45 days set forth in Rule 1.1403(b).[91] As such, Oncor would not object to Proposed Rule 1.1420(c) – standing alone; with one significant revision.[92] The proposed rule states that "a utility shall tender an offer ***to perform all*** necessary make-ready work, including an estimate of its charges."[93] Oncor does not generally perform communication make-ready work.[94] Instead, the attachers control their own destiny with respect to construction in the communication space. Oncor is not in the communication make-ready business, and does not want to be. As such, Proposed Rule 1.1420(c) should be amended to relate only to any make-ready work the electric utility pole owner agrees to perform.

C. Proposed Rule 1.1420(c)(1) – Stage 3 (Acceptance)

Oncor respectfully objects to any regulation that would sanction only partial payment for make-ready work.[95]

D. Proposed Rule 1.1420(d)-(e) – Stage 4 (Performance)

1. *Proposed Deadline Acceptable for Make-Ready Performed by Attachers in Communication Space Only*

Proposed Rule 1.1420(d)(1) states that "the ***utility*** shall set a date for completion of make-ready no later than 45 days after the notice." Based on the language set forth in the FNPRM and Proposed Rule 1.1420(d), Oncor interprets the 45-day timeline for completion of

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91 *Id.* at ¶ 16.

92 As explained above, regulation that requires Oncor to perform or allow make-ready is *ultra vires*. *See* pp. 16-19.

93 FNPRM, Proposed Rule 1.1420(c) (emphasis added).

94 Flewharty Decl. at ¶ 17.

95 *See* Section VI. Funding for make-ready work associated with communications attachments must rest with the entity seeking to attach.

make-ready as only applying to make-ready in the communications space.[96] If Oncor is correct, it is generally acceptable to suggest that communications attachers should complete their own make-ready in the communications space within the 45 day timeline. Oncor typically does not perform communications space make-ready. Instead, this process is left to the attaching entities. Therefore, any set timeline for the performance of such make-ready should be directed to the attaching entities and their contractors – not the pole owner.

If Oncor's interpretation is incorrect, and the Commission seeks to dictate the timing of power space make-ready, Proposed Rule 1.1420(d)(1) must be rejected. Mandating power space make-ready turnaround is a "forced build-out rule" contrary to Section 224(f)(2) (as recognized in two separate appellate decisions).[97]

2. *Electric Utility Pole Owners Are Not Make-Ready Coordinators*

Proposed Rule 1.1420(d)(2) requires that "the ***utility*** shall direct and coordinate the sequence and timing of rearrangement of facilities."[98] This is highly objectionable for at least two reasons. First, because the attaching entities are the parties requesting access ***and*** the parties performing the make-ready in the communications space, they should be responsible for directing and coordinating their make-ready efforts. If the Commission has no right to implement "forced build-out" rules, it has no right to force electric utility pole owners to coordinate any build-out.

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[96] *See* Proposed Rule 1.1420(f) ("the requesting entity may use a contractor to complete all necessary make-ready work" if the work is not completed within the proposed timeline); *see also* Proposed Rule 1.1424(a) ("Utilities may exclude non-utility personnel from working among electric lines on a utility pole."); *see also* FNPRM, APP. B., ¶ 7 (acknowledging that pole owners cannot be forced to change-out a pole to accommodate a new attachment).

[97] *See* pp. 15-19. In addition, power space make-ready can be much more complex and introduces a whole new host of variables that can make any one project significantly different from the next. The Commission should not be in the access/make-ready relationship at all; it certainly should not attempt to regulate what happens in the power space.

[98] FNPRM, Proposed Rule 1.1420(d)(2).

Second, the Proposed Rule would not address the attachers' alleged concern. Attachers contend that electric utility pole owners drag their feet in performing make-ready, causing them to suffer delays in deploying their services. Attachers want more "control" of the make-ready process to increase their speed-to-market. It seems counterintuitive, therefore, to mandate that pole owners exert ***additional*** control – ***neither previously exercised nor desired*** – over make-ready in the communications space. Moreover, Oncor cannot make the attachers perform the work. If the Commission requires the utility to coordinate the rearrangement of facilities – which it should not – utilities would need better enforcement mechanisms in place to ensure the compliance of attachers (many of which are outside the Commission's jurisdiction). This would also create the additional issue of who would be responsible for paying for the administrative burden placed upon electric utilities.[99]

3. *Electric Utility Pole Owners Are Not On-Demand Make-Ready Contractors*

Proposed Rule 1.1420(e) requires Oncor to perform make-ready where other attachers (namely ILECs) fail to move or modify their facilities within the proposed timeline. While Oncor is open to, and has already executed some, private agreements to address this issue in certain scenarios,[100] it is the exception and not the rule. Mandating that Oncor perform make-ready in every instance where an attacher fails to move or modify, regardless of whether an agreement is in place between the parties, is unworkable and unlawful. The Proposed Rule is unworkable because it would result in Oncor being an on-demand contractor for communications make-ready. As discussed above, Oncor is in the electric service business – not the pole rental or make-ready contractor business. Moreover, communications make-ready is typically performed

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[99] If attachers failed to pay the amount owed for this effort, Oncor would be forced to collect it from its electric rate payers.

[100] Flewharty Decl. at ¶ 29.

by the attaching entities – not Oncor. The Proposed Rule is unlawful for the reasons set forth on pages 15-19 above.

The Proposed Rule would also fall well short of its goal. The FCC lacks the statutory authority to mandate what it proposes given the presence of non-jurisdictional attaching entities on Oncor's poles. Oncor has a vast number of attachments owned by numerous attachers that are not governed by the FCC including: 514,487 attachments by 17 ILECs, 14,493 by 35 city/government agencies, 2,274 by 23 Independent School Districts, and 111 by 11 private businesses.[101] To require Oncor to move or modify the attachments for them is no different than the Commission exercising jurisdiction over the non-regulated attachers. [102] The Commission cannot boot-strap jurisdiction where it does not exist.

E. Proposed Rule 1.1420(f) – Stage 5 (Multiparty Coordination) – Adjustments to the Timeline

The FNPRM seeks comment on necessary adjustments or exclusions from the proposed timeline.[103] Oncor and other utilities have submitted to the Commission detailed comments concerning the practical issues that render make-ready timelines unworkable.[104] Setting aside the jurisdictional disconnect discussed above,[105] the "clock should stop" at the reasonable discretion of the pole owner. Given the myriad of potential issues that can arise, however, the

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101 *Id.* at ¶ 5.

102 In an effort to address any make-ready coordination issues, the FNPRM proposes a multi-party 30-day coordination period. However, the coordination period relates only to a situation where an attacher fails to timely move its attachments. This provision in no way addresses delays that can occur as a result of other circumstances.

103 FNPRM, ¶ 15.

104 *See, e.g.,* Initial Comments of Oncor Electric Delivery Company, WC Docket No. 07-245, generally (March 7, 2008); *see also* Reply Comments of Oncor Electric Delivery Company, WC Docket No. 07-245, pp. 14-17 (April 22, 2008); Reply Comments of Oncor Electric Delivery Company, Florida Power & Light Company, Tampa Electric Company, and Progress Energy Florida, Inc., GN Docket No. 09-51, pp. 5-8 (July 21, 2009).

105 *See* pp. 15-19.

Commission should not attempt to delineate specific exceptions or events that would justify the clock being stopped. Instead, the Commission should leave these issues to the private dealings between the parties.

As set forth in Oncor's previous comments, many factors can affect the access and make-ready process.[106] These factors include, without limitation, weather, timely payment of make-ready expenses, permitting related to highways and railways, and actions (or lack thereof) of other attachers.[107] Oncor's own experience demonstrates that one size does not fit all and that there must be flexibility in the access process to accommodate circumstances beyond Oncor's control. For example, in June 2004, a severe storm caused 14,842 outages affecting 1,407,760 Oncor customers.[108] Some outages lasted for ten days.[109] Again, in February 2010, a snowstorm caused 6,245 outages affecting 529,048 Oncor customers.[110] Some outages lasted for six days.[111] In addition to many mutual assistance and off-system contract construction resources, all of the available Oncor and contract crew personnel on the system were working full time to restore power for the six-day period.[112] Obviously, the degree of storm restoration required and the enormous amount of resources involved delayed ongoing make-ready projects for several days.[113] The June 2004 and February 2010 storms are two of the largest recent storms to hit

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106 Flewharty Decl. at ¶ 18.

107 *Id.*

108 *Id.* at ¶ 19.

109 *Id.*

110 *Id.*

111 *Id.*

112 *Id.*

113 *Id.*

Oncor's system.[114] However, large storms are by no means the only events that impact the ability to meet the proposed timeline.

Make-ready work affects entities other than the attachers and Oncor. If performance of make-ready for an attacher on a pole line requires that a certain set of customers (*i.e.,* large shopping center or hospital) suffer an outage for a period of time, Oncor must provide notice to the affected customers and work to establish a mutually agreeable time for the outage.[115] This is referred to as obtaining the necessary "customer clearance."[116] For example, an attacher (Grande Communications) recently had an ongoing project in Waco, Texas. Oncor had anticipated the work activity would be completed on July 16, 2010,[117] but there was a secondary service riser that had to be moved to a new pole installed as a result of Grande's permit application.[118] The transfer of the riser involved setting up an electric service clearance with a customer before making the transfer.[119] The customer requested time to make arrangements for the clearance and chose a time frame that added three weeks to Oncor's work schedule for completion of the work.[120] In this situation, the attacher has the option to wait, to simply go underground or to select a different route.[121] The use of approved contractors to perform make-ready in this context would not speed the process.

Another example of delay beyond Oncor's control is when the requested make-ready requires obtaining a permit in a highway right-of-way or over a railroad track. On average, it

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114 *Id.*

115 *Id.* at ¶ 20.

116 *Id.*

117 *Id.*

118 *Id.*

119 *Id.*

120 *Id.*

121 *Id.*

takes 3 months for railroads to grant a permit.[122] Attachers should already know about these types of permits and possible delays before submitting the permit application to Oncor. When attachers perform their route engineering, if it is a time sensitive project, they should avoid this situation or at least account for the likely delay in their timeline. While Oncor tries to make its attachers aware of potential issues up-front so the attacher knows its options, the granting of such permits is completely outside Oncor's control.[123]

Oncor strives to use the same timeline for make-ready for all of its foreign – Section 224 and otherwise – its attachers, Commission to ensure a consistent process that is more efficient and less costly to manage for everyone. However, it is unrealistic to expect Oncor, or any other electric utility pole owner, to meet certain specified access and make-ready timelines 100% of the time without flexibility. Utilities must possess the flexibility to grant access and perform make-ready on a case-by-case basis.

In summary, the clock should stop in at least the following situations (among many others): during storm restoration; when the make-ready requires modification of another party's attachments; when a customer clearance must be obtained; when an additional permit must be obtained (railway, city right-of-way, etc.); when projects exceed the attacher's limitations on permit applications; when the permit applications include cell tower back haul projects; and when the utility's workforce is called off-system to support another utility on storm duty (mutual assistance). As the numerous examples outlined above demonstrate, the dynamics of the pole access process are too fluid and too varied to attempt to confine them to certain enumerated events. Here, the Commission should leave the parties to their private deadlines and encourage ***mutual*** cooperation in the make-ready process.

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122 *Id.* at ¶ 21.

123 *Id.*

VI. THE PROPOSED MAKE-READY PAYMENT RULES

A. Oncor Must be Able to Require Up-Front Payment of Make-Ready Charges

Oncor's procedures require up-front payment of make-ready charges.[124] This has been Oncor's policy for over 10 years and has resulted in approximately 251,673 poles being permitted during that time period.[125] As demonstrated by the UTC Survey (which is often quoted in the FNPRM), Oncor's procedures accord with industry custom and practice and are inherently fair.[126] The idea of staging make-ready payments would upset years of industry practice, impose upon pole owners unnecessary administrative burdens, unfairly favor communications attachers over Oncor's electric customers, and shift attachers' business risks to Oncor. Oncor is not, and has no desire to be, a banker or make-ready clearinghouse for its 177 foreign attachers.[127]

Make-ready charges cover the costs associated with creating capacity for an additional attachment on a utility pole. Make-ready is not a revenue source or profit center. There is also a complete lack of record evidence that any electric utility is treating attaching entities in an unfair or unreasonable manner in requiring up-front payment for make-ready costs. The proposed rules are unnecessary and unfair.

Any timeline to perform make-ready should not start to run until an electric utility receives payment in full for the make-ready estimate. Anything less than full payment of the make-ready prior to beginning work (such as staged payments) results in an unreasonable

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[124] *Id.* at ¶ 23. Oncor also requires upfront payment when an electric customer requests work by Oncor (*e.g.,* installation of a street light, service drop relocation, undergrounding, etc.). *Id.* Communications attachers should not be preferred over Oncor's retail customers.

[125] *Id.*

[126] *See* UTC Survey, p. 17 ("Make-ready is expensive and almost all utilities [91% of those that responded] require payment of make-ready upfront.").

[127] Flewharty Decl. at ¶ 5.

administrative burden on the electric utility and a financial subsidy to the attaching entity. The proposed rules also unfairly shift business risks to pole owners that are more appropriately borne by the attaching entity. The risks are not speculative either. Oncor has experienced situations where an attaching entity has abandoned a make-ready project before completion.[128] Under the Proposed Rule, Oncor would have been left holding the bag.[129]

Although Oncor must protect its business interests and the interests of its ratepayers, it is not inflexible. When working large projects, Oncor has offered the option for the attacher to establish an account (with a minimum balance) that Oncor can withdraw from to fund make-ready.[130] For example, in 2003, Comcast had a significant upgrade project in Dallas that required permitting of 20,000 poles.[131] Comcast had a contractual deadline with the city and needed to coordinate with Oncor to ensure completion.[132] Oncor agreed to work with Comcast.[133] Among other things, Oncor allowed Comcast to set up a make-ready deposit from which Oncor could draw to access dedicated crews to upgrade their system in Dallas.[134] The project was completed successfully.[135] Similar cooperation was recently exhibited in Midland, Odessa and Waco, Texas where Oncor worked with Grande Communications on major upgrade projects.[136] This is certainly one option – and a much less onerous option – to avoid any delay

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128 Flewharty Decl. at ¶ 24.

129 *See* UTC Survey, p. 17 (reporting that even with upfront requirements, 4% of pole-owners responding to the UTC Survey reported unrecovered make-ready costs and 14% reported unrecovered field engineering costs.)

130 Flewharty Decl. at ¶ 25.

131 *Id.*

132 *Id.*

133 *Id.*

134 *Id.*

135 *Id.*

136 *Id.*

caused by lack of timely payment. Oncor works, and will continue to work, with its attachers to reach a mutually beneficial process. Neither Oncor nor any other electric utility pole owner, however, should bear the financial or business risks for the attaching entities.

B. Proposed Rule 1.1426(a) – Schedule of Make-Ready Charges

Oncor does not object to the proposal (Rule 1.1426(a)) that pole owners make available a "schedule of common make-ready charges." In fact, due in part to the requests of attaching entities, Oncor recently put in place unit pricing for the make-ready inspection phase (displacing the previous practice of time and mileage billing).[137] The unit pricing was adopted with the expectation that it would result in "better billing, planning transparency as well as better service costs accountability and efficiency" and the hope that it would enable attaching entities to "better budget . . . new build and upgrade projects."[138] Oncor provides this information to attaching entities on request and can make the charges publicly available (including posting them on its website). As such, the concept of publishing make-ready construction estimates could be acceptable if the parameters reflect reality.

The reality is that make-ready charges vary from project to project (based on how complicated the make-ready is or the market price of materials) and must be adjusted over time. Oncor's own services and materials agreements have provisions allowing its vendors to increase estimated cost items.[139] Oncor's attaching entities should fare no better. The charges must also be understood to be estimates, and not a set price. This is consistent with the use of the word "estimate" in Proposed Rule 1.1420(2)(c) and the use of the word "estimated" in Proposed Rule 1.1426 (b)(1)-(2). If the Commission decides to implement the make-ready payment rules, it

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137 *Id.* at ¶ 26.

138 *Id.*

139 *Id.*

should ensure that electric utility pole owners are not forced to under-recover the costs associated with creating additional capacity for attaching entities.

VII. THE PROPOSED MAKE-READY TIMELINE IS EVEN MORE UNWORKABLE FOR WIRELESS ATTACHMENTS

The Commission seeks comment on "whether the wired pole attachment timeline is appropriate for wireless equipment."[140] The Commission's stated goal "is to bring regularity and predictability to attachment of wireless facilities while acknowledging that the attachment of wireless telecommunications equipment in or near the electric space may raise different safety, reliability, and engineering concerns."[141] As explained above, make-ready deadlines are beyond the Commission's jurisdiction and unworkable for wireline attachments. Any such timeline is equally unlawful and even more unworkable for wireless attachments.

Oncor has approximately 755 wireless attachments from 3 different attachers.[142] These wireless attachments vary greatly in the type of equipment used, as well as the location of the equipment on Oncor's poles.[143] Each piece of wireless equipment differs in power outlet, dimension, height, weight, antenna size/location, power supply, photocell, etc.[144] For example, the antennas requested to be installed on Oncor's poles vary in size from .7 lbs to 45 lbs. and from .6" to 24" in diameter.[145] The antennas vary from 24" to 78" in height and from 13.75" to

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140 NPRM, ¶ 17.

141 NPRM, ¶ 18.

142 Flewharty Decl. at ¶ 6.

143 *See* Declaration of Waymon Guiton, ¶ 6 (attached hereto as Exhibit B).

144 *Id.*

145 *Id.* at ¶ 7.

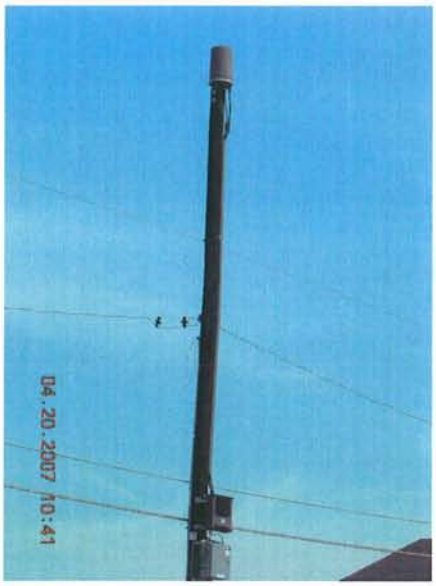
36" in width.[146] Oncor has received requests to install wireless equipment (other than antennas) weighing up to 217 lbs.[147]

The pictures below reflect just a few examples of the various wireless facilities installed on Oncor's system:




146 *Id.*

147 *Id.*



A one-size-fits-all make-ready process does not work for wireline attachments and it certainly does not work for wireless attachments. For example, Oncor has specific standards and specifications for wireless attachments.[148] These expand on the specifications for both wireline and wireless attachments.[149] One example of a different specification is the increased clearance required for wireless attachments.[150] In addition, each wireless company changes its techniques and/or equipment on average at least once a year.[151] Moreover, because wireless equipment typically occupies more space on a pole (*i.e.,* not just one point of connection with a wire), wireless attachments typically require a pole change-out which, in turn, requires additional make-ready.[152]

Oncor requires that wireless and wireline attachers comply with the same application process.[153] As part of this process, Oncor collects information on the type of equipment to be

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148 *Id.* at ¶ 5.

149 *Id.*

150 *Id.*

151 *Id.* at ¶ 9.

152 *Id.* at ¶ 10.

153 *Id.* at ¶ 11.

attached, the type of poles (or any other desired location) on which the equipment is to be attached, the dimensions of the equipment, the weight specifications, the location of the intended attachments, as well as other data.[154] In addition, because wireless equipment varies so greatly and is constantly changing, Oncor must also consult with the manufacturer of the poles to which the equipment is to be attached to determine whether the equipment will exceed the structure's capabilities.[155] Once this information is collected, Oncor determines whether the requested wireless attachments are permitted by its standards and specifications.[156]

If a wireless attachment is compliant, Oncor allows it – albeit after more labor than required for a wireline attachment. For example, when meeting certain criteria, Oncor allows wireless attachments to be made (directly on a street light or via a 4' bracket arm).[157] When a wireless attacher desires to so attach, Oncor must also consult the manufacturers of the street light and bracket arm to determine whether the equipment would exceed their capabilities.[158] If the capabilities will be exceeded, the manufacturers relay that information and Oncor notifies the attacher.[159] At other times, due to the overwhelming weight of some wireless equipment (Oncor has received requests to attach wireless equipment to a pole in excess of 200 pounds), wind loading can be an issue and must be analyzed in significant detail before a proposed attachment can be approved.[160] Although Oncor goes through these same processes when reviewing permit applications for new wireline attachers, the unique and ever changing wireless equipment

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154 *Id.*

155 *Id.*

156 *Id.*

157 *Id.* at ¶ 12.

158 *Id.* The manufacturers consider the strength of their poles and equipment to be confidential and proprietary. Therefore, Oncor cannot perform this work - it must wait for the manufacturers to respond. *Id.*

159 *Id.*

160 *Id.* at ¶ 13.

requires Oncor to undergo this process for each new wireless attacher, as well as each time an attacher changes its equipment or revises its design.[161] Again, Oncor's data demonstrates the point. While only 3.8% of poles permitted for wireline attachments require make-ready, approximately 20% of poles permitted for wireless attachments require capacity expansion.[162]

When the wireless equipment does not meet Oncor specifications (or where the manufacturer determines that the pole cannot support the proposed attachments), the attacher has the option to, without limitation: revise the attachment to meet the specifications, attach to a different pole, pay for the necessary make-ready (where make-ready is an option) or contact a private party in the same area and seek to attach to their building or other structure.[163] With these options, the parties are often able to reach mutually beneficial results. For example, in August 2009, NextG Networks, one of Oncor's wireless attachers, sought approval to attach a 48" antenna and mounting brackets (or pole top extensions) directly on top of street lights or service drop poles.[164] Oncor initially rejected NextG's requests because Oncor, as a general rule, does not utilize pole top extensions for several reasons.[165] First, the top of a wood pole will weather over time.[166] As the top of the pole weathers, it loses strength and often allows hardware to become loose.[167] Second, a pole top extension can drastically increase the load being applied to a pole top that has reduced strength.[168] Finally, utilizing a pole top extension would require Oncor to reframe existing poles by lowering the crossarm/brace and moving the

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161 *Id.* at ¶ 14.

162 Flewharty Decl. at ¶ 22.

163 Guiton Decl. at ¶ 16.

164 *Id.* at ¶ 17.

165 *Id.*

166 *Id.*

167 *Id.*

168 *Id.*

center phase electrical wire onto the arm.[169] Oncor expressed its concerns to NextG.[170] With consultation, the parties were able to successfully revise the equipment to meet Oncor's specifications and complete the project.[171]

Oncor's wireless attachment process is working well. Although Oncor has specific standards and specifications for wireless attachments, these standards and specifications do not act as a "barrier" to deployment. Instead they facilitate deployment while, at the same time, assisting Oncor's ongoing efforts to avoid interruption to its electric service and protect the public from injury. Oncor works with each wireless attacher to address its needs while taking steps to maintain a safe and reliable network. When followed, the process is a win/win for both sides. Once again, there is no need for Commission action.

VIII. USE OF APPROVED CONTRACTORS

The FNPRM proposes mandating that utilities permit attachers to use utility-approved contractors to perform make-ready when the utility is unable to grant access within the proposed timeline. For purposes of the use of approved contractors, the FNPRM distinguishes between (a) surveys and make-ready; and (b) post make-ready attachment of lines.[172]

The Commission is correct that "[c]rucial judgments about safety, capacity, and engineering are made during surveys and make-ready."[173] However, the FNPRM is incorrect in that merely permitting utilities "to decide which contractors it will approve and certify for surveys and make-ready addresses the need that utilities maintain control over safety and

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169 *Id.*

170 *Id.*

171 *Id.*

172 FNPRM, ¶ 21.

173 FNPRM, ¶ 24.

engineering standards."[174] The Commission also seeks comment on "the relative benefits of preserving greater control for utilities as compared to potential time- or cost-savings that attachers might obtain if they have appropriate contractors available and ready to do make-ready work."[175]

As continuously expressed throughout Oncor's previous comments to the NPRM and Broadband NOI, Oncor's number one goal is to maintain a safe and reliable electric distribution network.[176] This is why quality control is so important and why Oncor's control over its poles and the make-ready process is vital. While most attachers share these same goals, attachers' desires for speed to market provide an incentive for "blow and go" construction that creates dangerous situations.[177] At the same time, Oncor has no incentive to impede attachers' access to market. Oncor is not in commercial or retail competition with CATV and CLEC attachers (unlike ILEC pole owners).[178] To balance the incentives of attachers with Oncor's goal to provide a safe and reliable network, Oncor must maintain control over the performance of survey and make-ready on its poles.[179]

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174 *Id.*

175 FNPRM, ¶ 22.

176 *See* Initial Comments of Oncor Electric Delivery Company, WC Docket No. 07-245, pp. 3-4 (generally) and Exhibit B, ¶¶ 7-8 (March 7, 2008); *see also* Reply Comments of Oncor Electric Delivery Company, WC Docket No. 07-245 (April 22, 2008); Reply Comments of Oncor Electric Delivery Company, Florida Power & Light Company, Tampa Electric Company, and Progress Energy Florida, Inc., GN Docket No. 09-51 (July 21, 2009).

177 *See* Reply Comments of Oncor Electric Delivery Company, WC Docket No. 07-245, pp. 7-10 (April 22, 2008) (discussing and containing photographs reflecting a dangerous situation where a communications contractor was working on a pole close to Oncor's secondary power conductor (without wearing his hardhat and in an ungrounded bucket truck) in violation of the NESC and Oncor standards).

178 *See* Flewharty Decl. at ¶ 11.

179 This is not to say that Oncor needs to serve as the "managing utility" for all make-ready coordination. Oncor needs control over the work to be done, who does it and how it is completed – not management of scheduling the work.

Oncor does not oppose approved contractors making compliant post make-ready attachments in the ***communications space,*** nor does it oppose approved contractors working in the ***communications space.*** This is Oncor's long-standing practice and is consistent with industry custom.[180] Oncor does, however, oppose the Commission mandating that Oncor permit attachers to use contractors to (1) circumvent Oncor's permitting process and begin working without adequate pre-engineering simply because of an unworkable timeline; (2) perform critical surveys and make-ready; or (3) work in the power supply space.

A. Electric Utility Pole Owners Must Continue to be Allowed to Control Who Works on the Critical Electric Infrastructure

Because the survey and make-ready process is one of Oncor's key tools to ensure the electrical distribution system is maintained in a safe and reliable manner, Oncor, must have the flexibility on a case-by-case basis to determine which approved contractor is best suited for a specific job. Being classified as an "approved contractor" is not a conclusive stamp of approval that such contractor is the correct party to perform surveys and make-ready in every situation.

1. *Oncor's Contractor Process Works*

Oncor approves power space contractors all the way down to the individual level on a case-by-case situation.[181] Oncor does this to ensure that no one working on its infrastructure has previously been removed from the system for unsafe practices, causing damage, etc.[182] For example, when an approved contractor wishes to hire an additional employee, the approved contractor confers with Oncor to see if the individual is eligible to work on Oncor's system.[183] To ensure safety, reliability and proper application of sound engineering standards, it is

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180 Flewharty Decl. at ¶ 27.

181 *Id.* at ¶ 28.

182 *Id.*

183 *Id.*

imperative that Oncor have control over who determines what make-ready is necessary and who actually performs any power-space make-ready.

2. *Oncor and Attachers Cooperate on Approved Contractors*

The current process addresses the needs of both attachers and electric utility pole owners. Oncor nevertheless offers several options to further address attacher-specific needs such as use of dedicated crews, overtime,[184] transfer agreements, and joint operating agreements.[185] As just one example, Oncor is working with its primary maintenance and construction contractor to obtain agreements with several of its attachers for communications space work.[186] This effort seeks to have communications space transfers performed while Oncor's contractor is at the pole doing power space make-ready work.[187] The agreements would not only apply during the permitting make-ready process, but any time Oncor does work on the pole. While Oncor would still manage the contractor, the contractor – approved by Oncor to perform power space make-ready and also trained to do communications work – would potentially do all of the work needed while at the pole. Oncor and its attachers reached this agreement on their own, without a FCC mandate. While it works in that specific context, it is not suitable for an across-the-board national mandate.

In another example, Oncor has a transfer agreement with Charter, AT&T and the City of Fort Worth for purposes of a limited pilot project in the Benbrook Service Center. Pursuant to the agreement, Oncor's employees perform the necessary work to transfer the attacher's simpler

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184 Oncor's attachers often choose to forego the dedicated crew and overtime options because they do not want to pay for them. *Id.* at ¶ 29.

185 *Id.* at ¶ 29.

186 *Id.* at ¶ 30.

187 *Id.*

(tangent) facilities when required for a set per attachment fee.[188] The key here is that Oncor has a contractual relationship providing assurance of proper work and payment at a set price. The project has been in place for almost two years and appears to be working well.[189] From August 18, 2008 to August 5, 2010, Oncor has performed 262 transfers for AT&T, 283 for Charter and 57 for the City of Fort Worth.[190] Through this process, Oncor has been able to ensure that fewer obsolete poles are left in place – a significant problem arising from attachers' delay in making necessary transfers. Again, this agreement was forged without FCC intervention.

These are just a few examples of Oncor working with attachers to meet their goals. In most instances, the key to meeting attachers' make-ready expectations is for attachers to provide Oncor with as much notice as possible regarding its projects, especially larger projects. This allows for proper allocation of resources. Currently, attachers often wait until the very last minute to submit their permit applications, despite the fact the project has been in the works for a number of months (if not years) and despite the fact that Oncor makes it clear to attachers that their plans are confidential and Oncor will not share the information with other attachers.[191] Suffice it to say that attachers should involve Oncor in the planning of their projects as soon as possible. Being proactive and getting Oncor involved in the initial steps of the proposed projects accelerates the process by allowing many issues to be addressed on the front-end while also saving attachers money.

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188 *Id.* at ¶ 31.

189 *Id.*

190 *Id.*

191 *Id.* at ¶ 32.

3. *Most Electric Utilities Do Not Allow Foreign Attachers to Control Make-Ready and Surveys*

As reported in the 2007 UTC Survey, most utilities do not allow attaching entities to hire third parties to control make-ready and field surveys.[192] Specifically, the survey found that 66% of utilities did not permit licensees to hire third parties for field surveys and 78% of utilities did not allow licensees to hire third parties for make-ready.[193] While many utilities participating in the survey allowed third-party contractors to actually perform the work, the pole owners preferred to choose the contractor. "Because of the importance of engineering review and make ready for the integrity of critical infrastructure, utilities prefer to maintain control over the process rather than allow licensees to hire third-party workers to review poles and decide whether make ready is needed to accommodate attachments."[194]

B. Use of Approved Contractors Should Not be Tied to Unworkable Timelines

The FNPRM's approach regarding use of approved contractors to perform survey and make-ready is tied to the pole owner's alleged failure to complete make-ready in accordance with a specific timeline. In other words, if Oncor fails to perform make-ready within the timeline, the attacher can use a contractor to perform any such work. However, as discussed above, the Commission has no authority to force make-ready or set specific timelines.[195] Even if the Commission did have the authority to mandate make-ready, it should not mandate the use of approved contractors based simply on the failure to meet unworkable timelines.

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192 UTC Survey, pp. 15-16.

193 *Id.* at p. 16.

194 *Id.* at pp. 15-16.

195 47 U.S.C. § 224(f).

C. Use of Approved Contractors Should Not be Mandated When Dealing With Facilities in or Above the Power Supply Space

The FNPRM proposes that "utilities must permit contract personnel with specialized communications equipment training or skills that the utility cannot duplicate **to work among the power lines**, such as work with wireless antennae equipment."[196] This proposed mandate is unsafe and unreasonable. Work in the power space is highly dangerous and requires specially trained personnel, as well as specialized tools and equipment training. Even with specialized wireless equipment, how is it possible to assure safety for contractors working in the power space? Would utilities be required to turn the power off to their customers to allow the attacher's contractors to work safely? What about poles that cannot be accessed by truck? How can utilities safely allow "specialized" contractors to climb through the power supply space? The FNPRM addresses none of these safety questions. Determining when an approved contractor can be used, and which contractor can be used, must be left solely to the electric utility's case specific discretion.

Should the Commission choose to implement Proposed Rule 1.1424 over the objection of the electric utilities, the Commission should, at a minimum, clarify that the rule applies in ***VERY*** limited circumstances. Proposed Rule 1.1424 (a) is a rule of exclusion. The Commission should ensure limited application by making clear that the following factors must be present to allow the contractor in the power supply space:

1. There must be communications equipment that must be placed in the supply space (*e.g.*, a pole top antenna). This arises from 1.424(a) ("which are necessary to add or maintain a pole attachment");

2. The utility cannot duplicate the "communications equipment skills or training . . . necessary to add or maintain a pole attachment." Proposed Rule 1.424(a). So long as the utility's approved contractors can do the

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196 FNPRM, ¶ 32 (emphasis added).

job, there will never be a need for the specially trained communications contractor;

3. Even if the situation in paragraph 2 above arises, the communications worker has to work "[i]n concert with the utility's workforce; ***and***

4. The utility must "deem it safe" (consistent with its right set forth in Section 224(f)(2)).

As such, Oncor proposes the following revisions to Proposed Rule 1.1.424:

> **1.1424 Exclusion from work among the electric lines.**
>
> (a) Utilities may exclude non-utility personnel from working among the electric lines on a utility pole. ~~except workers with specialized communications equipment skills or training that the utility cannot duplicate which are necessary to add or maintain a pole attachment~~.
>
> (b) Utilities ~~shall~~ **may** permit workers with specialized skills or training concerning communications equipment to work among the electric lines:
>
> (1) In concert with the utility's workforce; ~~and~~
>
> **(2)** When the utility deems it safe **(consistent with its rights under Section 224(f)); and**
>
> **(3) The work can be performed consistent with all applicable safety codes and regulations and the utility's construction standards and/or specifications (including, without limitation, the National Electric Safety Code).**

D. Resource Allocation and Enforcement of Existing Contracts Conflict with the Commission's Approach

The Commission initially noted that it was "unpersuaded by contentions from certain utilities that our decisions on outside contractors will lead to resource diversion of non-employee "'resources,' undercutting their ability to deliver traditional services."[197] Resource allocation **IS** an issue. The FNPRM assumes that there are approved contractors sitting around waiting for the call to perform attacher make-ready work. While this may look good on a policy whiteboard, it

[197] Order and FNPRM, ¶ 63.

does not reflect reality. In Oncor's experience, there are no "excess contractors" waiting for work for many reasons, including the fact that such contractors must have special training and require and use expensive equipment.[198] These are not open-market type contractors.[199] Many, if not all, utility approved contractors are already parties to contracts with the utilities. In fact, during the all too frequent storm restoration process, Oncor often has to obtain the needed workers by requesting that other contractors, less frequently used by Oncor, be temporarily released from their obligations to other electric utilities.[200] Contractors do not have crews just waiting on the bench to be called up for work.

Many approved contractors' contractual agreements with utilities would be severely hindered – and likely breached – if the Commission universally mandated that attachers be permitted to directly employ the same contractors. For example, Oncor has executed agreements with 15 existing contractors.[201] These agreements set out specific requirements each approved contractor must meet including, without limitation:

- Provide Emergency Services when required;
- Prepare and provide reports pertaining to the performance of its obligations sufficient to permit Oncor to monitor and manage performance;
- Provide Oncor with the right to accept or reject all services not provided in accordance with the agreement, establish a process for correcting any non-conforming services and reimburse Oncor for any expenses incurred as a result of non-conforming services;
- Establish a specific procedure for problem analysis;
- Develop and implement quality assurance processes and procedures approved by Oncor;

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198 Flewharty Decl. at ¶ 33.

199 *Id.*

200 *Id.*

201 *Id.* at ¶ 34.

- Participate in monthly, quarterly and annual meetings (which include different Management levels) when performing work with Oncor;
- Maintain complete and accurate record of, and supporting documentation related to, the contractor's services and performance of obligations;
- Provide Oncor with priority over all other contractor customers when a disaster or major event occurs causing an issue with resource allocation; and
- Execute indemnification provisions, protecting Oncor.[202]

Because of the fundamental importance of proper survey and make-ready to Oncor's system, Oncor must be able to rely on its contractual relationships with its contractors.

If the proposed rule is adopted, another issue could arise when an approved contractor is trying to determine which specifications and standards it is bound to follow (depending on who the contractor is "working for"). For example, as discussed in Oncor's previous comments, Oncor has several specifications that are more stringent than the NESC.[203] Texas rulemaking bodies have also adopted more stringent standards than those adopted by the NESC.[204] Each approved contractor's agreement with Oncor requires that the contractor perform its obligations in compliance with the applicable Oncor Policies and Standards.[205] This provides a level of comfort that Oncor's Texas-specific stringent specifications will be followed and subjects the contractor to a contractual obligation to perform in compliance with Oncor's specifications. In the face of Oncor's more stringent specifications, attachers may take the position that the NESC is the final word on clearance, loading and work practices and end-all-be-all for attachment

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202 *Id.*

203 *See* Initial Comments of Oncor Electric Delivery Company, WC Docket No. 07-245, pp. 5-8 (March 7, 2008) (By way of example only, while the NESC permits clearance from the highest communication attachment to the lowest electrical supply to be 30" for grounded neutrals, Oncor requires 40" of clearance in all circumstances).

204 *Id.* (noting that under Texas law, the NESC is a mandatory (minimum) standard, and including examples of more stringent Texas standards such as the Texas Department of Transportation's requirement of a minimum of 18 feet of clearance above highways for communication and cable television lines (where the NESC only required 15.5 feet of clearance).

205 Flewharty Decl. at ¶ 35.

procedures and guidelines. When employed by an attacher, will the approved contractor follow the direction of the attacher (NESC) or the pole-owner (NESC-plus)? Oncor must ensure that its standards and specifications are satisfied.

IX. UNAUTHORIZED ATTACHMENTS ARE A SUBSTANTIAL SAFETY AND RELIABILITY CONCERN

A. The Commission Should Not Interfere With Electric Utility Pole Owners' Ability to Enforce Contractual Provisions

The Commission states, it is "unable to gauge with certainty the extent of the problem of unauthorized attachments."[206] Respectfully, there can be no uncertainty. The problem is real, documented and must be addressed. The only question is *how* to address the problem.

As reflected by the actual data filed in response to the NPRM, the significant risks created by unauthorized attachments are well beyond merely transcending "the theoretical."[207] Specific to Oncor, unauthorized attachments are a widespread problem which threatens the safety and reliability of the electrical distribution infrastructure.[208] Oncor's 2002-2003 pole attachment count found more than 25,000 unauthorized attachments.[209] The 2007-2008 pole attachment count revealed 31,139 unauthorized attachments.[210] As a result of the 2007-2008 attachment count results, a total of 24 attachers paid a total of $1.2 million for those unauthorized

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206 FNPRM, ¶ 54.

207 FNPRM, ¶¶ 52, 54; *see also* Reply Comments of Florida Power & Light, Tampa Electric, and Progress Energy Florida, WC Dkt. No. 07-245, p. 6 (reporting over 61,000 unauthorized attachments during one pole count); Initial Comments of the Edison Electric Institute and the Utilities Telecom Council, WC Dkt. No. 07-245, p. 34 (reporting that CenterPoint Energy reported approximately 79,000 unauthorized attachments); Initial Comments of the Coalition of Concerned Utilities, WC Dkt. No. 07-245, p. 74 (reporting that an audit performed by Toledo Edison found a 29% unauthorized attachment rate for telephone attachments, and a 33% unauthorized attachment rate for cable companies). *See also,* UTC Survey, p. 19. ("Unfortunately, utilities are finding that many pole attachments are unauthorized and/or in violation of code. Utilities reported on average more than 11% of all attachments are unauthorized and more than 13% are in violation of code.").

208 *See* Initial Comments of Oncor Electric Delivery Company, WC Dkt. No. 07-245, pp. 12-17 (March 7, 2008).

209 *Id.* at 14.

210 Flewharty Decl. at ¶ 36.

attachments.[211] Centerpoint Energy's data regarding unauthorized attachments demonstrates that Oncor's experience is not unique in Texas.[212]

Oncor's Permit Application Process allows Oncor the opportunity to inspect the pole prior to any attachment and, if necessary, make modifications or deny access, as appropriate, to preserve the safety and reliability of the distribution poles.[213] This process minimizes the opportunity for dangerous situations to be created which endanger human life, as well as cause outages or other issues diminishing the reliability of Oncor's distribution system.[214] As acknowledged by the FNPRM, "[t]rue unauthorized attachments ***can compromise safety because they bypass even the most routine safeguards***, such as verifying that the new attachment will not interfere with existing facilities, that adequate clearances are maintained, that the pole can safely bear the additional load, and that the attachment meets the appropriate safety requirements of the utility and the NESC."[215] ***The process does not work when attachers continuously circumvent it to obtain quicker speed to market.***

Because unauthorized attachments are a significant problem that poses substantial threats to safety and reliability, the question then becomes: What will serve as a sufficient deterrent to decrease the frequency of unauthorized attachments? In two specific cases, the Commission has limited pole owners to recovery of back rent, plus modest interest – what the Commission

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211 *Id.*

212 *See* EEI Comments filed August 16, 2010 (Based on a new audit started in 2009, Centerpoint Energy has found, based on 200,000 poles surveyed to date, approximately 10% unauthorized attachments).

213 *See* Initial Comments of Oncor Electric Delivery Company, WC Dkt. No. 07-245, p. 13 (March 7, 2008).

214 *Id.*

215 FNPRM, ¶ 54 (emphasis added).

described as "compensatory damages."[216] The Commission is correct that "penalties amounting to little more than back rent may not discourage non-compliance with authorization process."[217]

Back rent, even when including interest, is not a sufficient deterrent for unauthorized attachments. This is evident by the overwhelming number of unauthorized attachments, a number that continues to increase. By circumventing the permitting process, attachers achieve their desired speed-to-market with no real penalty. Attaching entities are in no worse condition when their unauthorized attachments are discovered than if they had complied with the permitting process.

The Commission inquires as to what procedures should be adopted to address unauthorized attachments. ***The answer is simple: allow electric utility pole owners to enforce their contractual agreements.*** When circumstances require, electric utilities must have the ability to impose meaningful financial penalties to deter unauthorized attachments. Enforcement of substantial contractual penalties is likely the only manner in which to deter unauthorized attachments.

Oncor's pole attachment agreements provide for a $25 per unauthorized attachment fee, in addition to back rent, with interest.[218] Because of the Commission's prior precedent of awarding only back-rent plus interest, Oncor must constantly defend its contractual entitlement to the unauthorized attachment fee.[219] In fact, Oncor often must accept less than it is

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[216] *See In the Matter of Mile Hi Cable Partners, LP, et al. v. Public Service Co. of Colorado*, 17 F.C.C.R. 6268 (2002) discussing penalties for unauthorized attachments and stating that "there is no basis in the record to support a conclusion that Respondent is entitled to exemplary or punitive damages beyond compensatory damages."); *see also Salsgiver Commc's, Inc. v. North Pittsburgh Tel. Co., Memorandum Order and Opinion*, EB-06-MD-004 (November 26, 2007) (holding that a $250 unauthorized attachment penalty was unreasonable and limiting recovery for unauthorized attachments to compensatory damages).

[217] FNPRM, ¶ 57.

[218] *See* Initial Comments of Oncor Electric Delivery Company, WC Dkt. No. 07-245, p. 17 (March 7, 2008).

[219] Flewharty Decl. at ¶ 37.

contractually entitled to receive in order to avoid litigation.[220] Oncor urges the Commission to (1) recognize the actual threats to safety and reliability created by unauthorized attachments and (2) endorse penalties sufficient to serve as a deterrent by actively supporting enforcement of contractual provisions. That is the only proper way to stop unauthorized attachments.

B. Oncor's Observations On Oregon's Unauthorized Attachment Model

The FNPRM seeks comment on "whether the system of penalties instituted by the Oregon Commission has been effective in reducing the incidence of unauthorized attachments" and if the Commission should adopt the Oregon standards as presumptively reasonable.[221] Oncor is a Texas electric utility and, therefore, cannot comment on the actual effectiveness of the Oregon model or endorse its adoption. However, Oncor offers the following thoughts on the potential effectiveness of that model. Under the Oregon model, if a pole owner fails to provide an applicant with notice that an application is approved, denied, or conditioned within 45 days of receipt, the applicant may begin installation. Oregon Administrative Rule 860-028-0100(4)(e) provides that any "unpermitted attachments" in this situation are not subject to the unauthorized attachment sanctions. There should be no exception to the penalty for unauthorized attachments. Similarly, Oregon differentiates between unauthorized attachments reported by the attacher or discovered during a joint inspection (that penalty is five times current annual rental fee per pole) and those reported by the pole owner in an inspection in which the attacher has declined to participate (penalty of $100 per pole plus five times the current annual rental fee per pole).[222] Again, the differentiation between the two is not warranted. Moreover, only the more substantial $100 plus five times annual rental would have any chance of discouraging unauthorized

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220 *Id.*

221 FNPRM, ¶ 59.

222 *See* OAR 760-028-0140.

attachments. All unauthorized attachments impact safety and reliability, and all should be subject to the same stiff penalties. While the Oregon model may in fact help to address the prevalence of unauthorized attachment based on its penalty scheme, Oncor believes that the same result could be reached by simply allowing electric utility pole owners to enforce their negotiated contracts.

X. "SIGN AND SUE" RULE

The Commission proposes to revise the "sign and sue" rule to require an attacher to provide a electric utility with notice during contract negotiations of the terms it considers unreasonable or discriminatory.[223] If the sign and sue rule is retained at all, Oncor does not oppose a requirement that the attacher provide advance notice of any claimed "unreasonable or discriminatory" provisions.[224] However, Oncor does not believe the proposed rule will encourage "attachers and utilities to negotiate innovative and mutually beneficial solutions to contested contract issues."[225]

The sign and sue rule, in its existing and proposed forms, does not provide an incentive to negotiate mutually beneficial contract provisions. Instead, it does the exact opposite – it impedes the negotiation process by providing attachers the incentive to simply sign, get what they want (access), and then sue at a later date. In the meantime, the utility is left with an agreement that cannot be considered final in light of this one-sided (attacher-friendly) rule.

Proposed Rule 1.1404(d) is particularly one-sided and unfair in proposing removal of the obligation to provide prior notice "where the attacher establishes that the rate, term, or condition

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223 FNPRM, ¶ 62.

224 Oncor's discussion of the proposed "sign and sue" rule, for purposes of argument, in no way waives or minimizes Oncor's consistent position that state law governs – and should continue to govern – the enforcement of executed contracts.

225 FNPRM, ¶ 70.

was not unjust and unreasonable on its face, but only as later applied by the utility, and the attacher could not reasonably have anticipated that the utility would apply the challenged rate, term, or condition in such an unjust and unreasonable manner."[226] There is in effect no time limitation for such a complaint. In other words, if a utility performs a function ***expressly*** permitted by the agreement years after execution, the attacher is then free to claim that the provision is unreasonable despite the fact that attacher has been aware of, and bound by, the provision for an extended period of time. This flies in the face of common sense and well-established legal precedent regarding the intent and effect of contract provisions.[227]

The proposed requirement that the attacher "could not reasonably have anticipated" that the utility would apply the contract provision in an "unjust and unreasonable manner" does not cure this concern. It simply adds a "subjective" element to the analysis requiring in-depth discovery of the negotiation documents, correspondence and other information to determine what an attacher could "reasonably" have anticipated. This type of in-depth analysis is expensive and time-consuming. Moreover, this type of analysis is outside the expertise of the Commission.

Additionally, Proposed Rule 1.1404(d) is unworkable as it contains no requirement that attachers assert any such protests to the rates and terms in good faith. The adoption and enforcement of Proposed Rule 1.1404(d) could – and likely would – result in the "blanket" contestation of standard contractual provisions by attachers. This will defeat the entire purpose of Proposed Rule 1.1404(d) as set forth in the FNPRM as it would provide utilities with no notice of which provisions the attachers actually consider to be objectionable (as opposed to just

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226 FNPRM, ¶ 71.

227 *See Pyle v. Eastern Seed Co.*, 198 S.W.2d 562, 563 (Tex. 1946) ("Where the parties sign and thereby enter into a written contract, they are bound by its provisions."); *Pacific Mut. Life Ins. Co. v. Westglen Park, Inc.*, 325 S.W.2d 113, 116 (Tex. 1969) (same); *Murray Co. v. Putman*, 130 S.W. 631, 633 (Tex. Civ. App. 1910) ("The law holds parties bound by written contracts, and in order to be relieved from a contract's terms and provisions a party must show some legal excuse for failing to read and understand it before signing it.") (citations omitted).

trying to make sure that they don't waive any rights to later object). Respectfully, the revision in no-way ensures that a pole-owner will not be "blindsided" by post-execution challenges.[228]

XI. AVAILABILITY OF DATA

The FNPRM asks "how the Commission can improve the collection and availability of information regarding the location and availability of poles, ducts, conduits and rights-of way."[229] The requested information relates to critical electric infrastructure. It should not be widely disseminated. To the extent such information is needed by attachers, Oncor's current processes are working to provide what attachers truly need. Nothing in the record contradicts this or otherwise demonstrates that the proposed database is needed. Again, this may be good policy whiteboarding, but it is unworkable in the real world.

As an initial matter, the Commission does not possess the statutory authority to "micromanage" electric utility recordkeeping practices, nor does it have the authority to control the manner in which utilities manage and share infrastructure information. Nothing in Section 224 provides the Commission with the authority to require that electric utilities create and maintain a database of information (let alone the information referenced in the FNPRM). Even further, the Commission lacks the requisite authority over all relevant parties (which include entities outside the Commission's jurisdiction such as ILECs, municipalities and cooperatives) whose participation would be necessary to achieve the Commission's goals.

Even assuming that the Commission had the requisite authority, the FCC should not mandate that highly sensitive information be gathered, made available or aggregated into a publicly available national database. In this case, the associated risks clearly outweigh any

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[228] FNPRM, ¶ 71. Here, the Commission should do the right thing and eliminate the "sign and sue" rule in its entirety. Elimination of the sign and sue rule would not leave attaching entities without protection. Instead, it would simply level the contractual playing field and put contract execution issues where they should be – in the hands of the state courts.

[229] FNPRM, ¶ 38.

hypothetical benefit. Moreover, based on the overwhelming number of unauthorized attachments and attachers' routine failure to provide notice of attachment installation or removal, there is no evidence that such a database would increase the efficiency of the overall process. Oncor's system changes daily. To create and maintain the type of database envisioned in the FNPRM would require constant input from Oncor, all attachers and ILEC pole owners. This would place an unreasonable burden on Oncor, as well as other electric utilities, and is outside the Commission's limited statutory authority.

A. Publication of Critical Infrastructure Data Could Create Substantial Security Issues

Posting sensitive information concerning the electrical infrastructure to be accessed by ***anyone*** at ***anytime*** could aid individuals wishing to harm the United States. The Commission should not mandate that this information be made publicly available.

This is not to say that Oncor will not continue to work with its attachers on a case-by-case basis to provide requested information regarding the location of its poles, to the extent Oncor has such information and under necessary confidentiality protections. For example, pursuant to certain city ordinances, Oncor sometimes provides information regarding its pole locations. However, absent such a requirement or when a nondisclosure agreement is executed, Oncor does not release the broad spectrum of information detailed in the FNPRM (*e.g.*, information regarding the location and availability of poles, ducts, conduits, and rights-of-way) or aggregate such data in a common data repository without substantial limitations on access and use of that information.[230] To release such information, it would be necessary, ***at a minimum***, that the requesting entity certify to the electric utility that it: (1) needs the data for specific and

[230] While Oncor provides maps showing the location of its poles, the vast majority of the data requested in the FNPRM (*i.e.*, the "availability" of poles, ducts, conduits and rights-of-way) is currently non-existent. Flewharty Decl. at ¶ 38.

permitted purposes; (2) will only use the data for such purposes, (3) will maintain the confidentiality of such data; (4) will destroy that data once it is no longer needed, and (5) will be responsible and liable for any misuse. This critical infrastructure data requires nothing less.

B. Creation and Maintenance of the Data Would Place a Significant Financial and Administrative Burden on Electric Utility Pole Owners

The FNPRM inquires as to what it might "cost" to compile the general data regarding poles, conduits, ducts and rights of way. However, the "cost" of conducting the actual inventory is not the only cost to be considered. Oncor does not have a database capable of gathering and maintaining the type of information envisioned in the FNPRM.[231] In other words, Oncor would have to create the electronic tools to gather and maintain the requested information before Oncor could provide the information requested in the FNPRM.[232] Oncor estimates that the cost to create the type of complex web tool or database necessary to gather and store the requested information would be at least $500,000.[233] In addition to that cost, the actual "inventory" would require Oncor to survey approximately 2 million poles.[234] Oncor can likely inventory 20% of poles per year over a five-year period.[235] Oncor would be required to take detailed measurements of multiple dimensions (including weight) and evaluate each pole to ensure accuracy of the information to be reported at the time of the inventory.[236] Oncor estimates that the cost of this inventory would be at least $20 per pole (if not much more), for an estimated initial total cost of

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231 Flewharty Decl. at ¶ 39.

232 *Id.*

233 *Id.* at ¶ 40.

234 *Id.*

235 *Id.*

236 *Id.*

no less than $40 million.[237] Neither Oncor nor its ratepayers should be responsible for this cost. As the data would be gathered and maintained for the benefit of attaching entities, the attaching entities should bear all costs.

In light of the prevalence of unauthorized attachments and the fact that attachers are notoriously bad at providing updated attachment data, gathering the data is only the first cost component. The database would still have to be maintained.

Oncor's current practice of providing 2 dimensional maps (reflecting pole location and street) upon an attacher's request, at the attacher's cost, and under confidentiality protections, sufficiently addresses an attacher's needs.[238] Mapping the availability of pole space is a different issue. The "inventory" referenced in the FNPRM would essentially be a "snapshot" of Oncor's poles ***at that specific time***. However, the condition of Oncor's poles is not static. Pole dynamics constantly change based on many factors, including additional attachments, unauthorized attachments, removal of attachments, etc.[239] Because the poles are constantly changing and there is no current system to track and maintain the requested data in real time, the FNPRM's proposed "inventory" would not dispense of the need to conduct actual field surveys to determine the availability of pole space.[240] The proposed data inventory (and the storing of such data) would add additional steps to the access process and create additional – and unnecessary – burdens on the electric utility pole owner.

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237 *Id.* Given attachers inability to accurately report their attachments, the pole inventory process would likely have to continue each year to maintain an accurate database. This would cause the costs to continue to escalate, with no end in sight.

238 Flewharty Decl. at ¶ 38.

239 *Id.* at 41.

240 *Id.*

XII. THE FNPRM PROPOSAL TO "REINTERPRET" THE TELECOM RATE IS CONTRARY TO THE ACT AND WOULD CREATE AN UNSUPPORTED AND UNLAWFUL SUBSIDY

The FNPRM announces the Commission's desire to "to limit the distortions present in the current pole rental rates by reinterpreting the Telecom Rate to a lower level consistent with the Act."[241] The Commission attempts to reach this result by reinterpreting the term "cost" in Section 224(e) to exclude capital costs (rate of return, depreciation and taxes).[242] This announced goal is internally inconsistent and self-defeating. At the same time, the record is devoid of evidence that the new Telecom subsidy will in any manner spur broadband deployment. The proposed "reinterpretation" should be rejected.

If the Commission wants to adhere to Congress' true intent, it should go back to the drawing board and examine certain flaws to the Telecom Rate that, in all likelihood, would increase (not lower) the delta between it and the historic subsidy embedded in the Cable Rate.[243] The proposed "reinterpretation" to lower (or, in reality, repeal) the Telecom Rate by excluding capital costs is in direct conflict with the Act, the Code of Federal Regulations, and established precedent. The Act mandates two rates, with the Telecom Rate being higher due to the proper inclusion of all costs associated with providing pole space.

The need to reject the proposed changes to the Telecom Rate is particularly acute because the end goal – lower and ***uniform*** rates – cannot be achieved. Even if the FCC could reconcile the statutory distinction between the two rates, which it cannot, it is unable to force the new rates

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241 FNPRM, ¶ 79.

242 FNPRM, ¶ 96.

243 *See* Reply Comments of Oncor Electric Delivery Company, Florida Power & Light Company, Tampa Electric Company, and Progress Energy Florida, Inc., GN Docket No. 09-51, pp. 14-17 (July 21, 2009) (explaining that all *wireline* attachments within the Commission's jurisdiction used for broadband should be subject to the same rate: that rate being the Telecom Rate with modified presumptions. However, the single broadband rate should not apply to *wireless* attachments.); Comments of the Edison Electric Institute and the Utilities Telecom Council, GN Docket 09-51, WG Docket 07-245 (August 16, 2010).

upon all pole owners.[244] As such, even assuming the new rules were implemented, the Commission cannot mandate a national uniform pole attachment rate regime. This Commission itself acknowledged in the National Broadband Plan that any "reformed FCC regime would apply to only 49 million of the Nation's 134 million poles."[245] The disconnect between the proposed reform and the desired result is compounded by the very real fact that most of the 49 million poles are in urban areas most likely served by multiple broadband providers. This is certainly the case for Oncor. For this reason alone, this issue is best left to Congress.

A. Manifesting an Intent to Phase-Out the Cable Subsidy, Congress Mandated Two Distinct Rates

The Commission's authority is specifically limited to that delegated by Congress.[246] As such, when interpreting FCC jurisdictional authority, one must start with "the language of the statute itself."[247] The Act establishes two very different rates that control in the event the parties fail to reach an agreement. The Cable Rate was implemented with the Act in 1978 and applies to "any pole attachment used by a cable televisions system solely to provide cable service."[248] The Telecom Rate was implemented as part of the 1996 amendments to the Act, and applies to telecommunications carriers and cable television companies providing telecommunications

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[244] The Act gives the FCC no jurisdiction over poles, conduits, ducts or rights-of-way owned or controlled by municipally-owned electric companies, rural electric cooperatives or railroads. *See* 47 U.S.C. §224(a)(1).

[245] *Connected America: The National Broadband Plan*, p. 30 (*available at* www.broadband.gov).

[246] *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 214-14 (1976) (agency power is "not the power to make law. Rather, it is 'the power to adopt regulations to carry into effect the will of Congress as expressed by the statute.") (quotations and citations omitted); *see also Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 208 (1988) (stating that "it is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress.").

[247] *Southwestern Bell Corp. v. FCC*, 43 F.3d 1515, 1520 (D.C. Cir. 1995) (quoting *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186, 1991 (D.C. Cir. 1985)).

[248] 47 U.S.C. § 224(d).

services.[249] Congress enacted the distinct rates with full knowledge that the Telecom Rate would yield a higher rate, based on the manner in which unusable space is more accurately allocated.[250]

Since 1996, the Telecom Rate has, as anticipated, yielded a higher rate than the Cable Rate. Although the current Commission may now desire to adopt a Telecom Rate more comparable to the Cable Rate, "[t]he agency's policy preferences cannot trump the words of the statute."[251] "[N]either federal agencies nor the courts can substitute their policy judgments for those of Congress."[252] "[I]f the intent of Congress is clear, that is the end of the matter; for the court as well as the agency, must give effect to the unambiguously expressed intent of Congress. ... It is only if the intent of Congress is ambiguous that we defer to a permissible interpretation by the agency."[253]

When Congress set out to bring certain telecommunications carriers within the ambit of the Act, it could have easily specified that the Cable Rate applied to all pole attachments – uniformly. It did not. Instead, Congress established a new rate for "pole attachments used by telecommunications carriers to provide telecommunications services."[254] As discussed more fully below, the new rate was specifically designed to allow pole owners to more fully recover the costs of providing space to attachers. Congress explained the justification as being based on the undeniable fact that the unusable space on a pole "is of equal benefit to all entities attaching

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249 47 U.S.C. § 224(e).

250 *See, e.g.*, 47 U.S.C. § 224(e)(4) (dealing with phase-in of the more equitable Telecom Rate).

251 *Nat'l Treasury Employees Union*, 452 F.3d at 865.

252 *Brown & Williamson Tobacco Corp.*, 153 F.3d at 161 (refusing to pass judgment on the merits of the regulatory scheme proposed by the agency and stating: "By its *ultra vires* action, the [agency] has exceeded the authority granted to it by Congress, and its rulemaking action cannot stand.").

253 *Chevron USA, Inc. v. NRDC, Inc.*, 467 U.S. 837, 842-43 (1984).

254 47 U.S.C. § 224(e).

to the pole."[255] This is in stark contrast to the Cable Rate[256] and clearly demonstrates the legislative intent to create a separate and distinct rate that would yield a higher rate than the pre-existing Cable Rate.

B. The Cost Component in Section 224(e) is Not "Ambiguous"

The FNPRM builds the proposed "reinterpretation" of the Telecom Rate on the notion that there is an ambiguity because Congress did not define the term "costs of providing space." With this newly perceived ambiguity, the FNPRM proposes to adopt a "cost causation theory" that focuses on "what costs the attacher causes" as opposed to "the attacher's benefit."[257] Both the foundational premise and the proposed "costs causation theory" are flawed. There is no ambiguity in the Act. The plain language of the Act, read as a whole[258] and buttressed by unequivocal legislative history, establishes a very clear definition of the phrase "costs of providing space" and that definition focuses on the benefits to the attacher (not cost causation principles).[259]

The notion of the "costs of providing space" was established by Congress in Section 224(d)(1) of the Act and very clearly includes "the sum of the operating expenses and actual

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[255] H.R. Rep. No. 104-204 at 92 (1995), reprinted in 1996 U.S.C.C.A.N., at 58-59; H.R. Rep. No. 104-458 at 206 (1996), reprinted in U.S.C.C.A.N. 124, 220 (Conf. Rep.); *see also Ga. Power Co. v. Teleport Commc'n, Inc.*, 346 F.3d 1033, 1037 (11th Cir. 2003) (explaining that the nonusable space on the pole is "nonetheless necessary to support the remainder of the pole, where attachments can be placed.")

[256] *See Ala. Power Co. v. FCC,* 311 F.3d 1357, 1367, n.18 (contrasting the cable rate and stating "[t]he regulated rate that telecommunications companies must pay, by contrast [to the Cable rate], includes the unusable portion of the pole.").

[257] FNPRM, ¶ 96.

[258] "Statutory language cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989); *see also King v. St. Vincents Hosp.*, 502 U.S. 215, 220 (1991); *Southern Co. v. FCC*, 293 F.3d 1338, 1346-47 (11th Cir. 2002) ("While the FCC is correct that the principle of non-discrimination is the primary purpose of the 1996 Telecommunications Act, we must construe statutes in such a way to give effect, if possible, to every clause and word of a statute.").

[259] FNPRM, ¶ 91.

capital costs of the utility attributable to the entire pole."[260] Section 224(e)(2), added in 1996, mandates that the pole owner "apportion the cost of providing space on a pole . . . other than usable space [*i.e.*, unusable space]" in a manner that ensures that the attaching entities pay "two-thirds of the costs of providing the [unusable] space."[261] Section 224(e)(3) then requires that the pole owner "apportion the costs of providing usable space among all entities according to the percent of usable space required for such entities."[262] In this context, Congress did not need to define what is apparent from Sections 224(d)(1), 224(e)(2) and (e)(3). The phrase "costs of providing space" relates to all costs associated with both the usable and unusable space on the pole. The Commission is simply not a liberty to ignore Congress' mandate because it now thinks there is a better way.[263]

This plain-reading of the Act is supported by both legislative history and long-standing Commission practice. Congress intended that the Telecom Rate allow pole owners to charge attaching entities "fully allocated costs."[264] The concept of "full allocation" and cost-causation are simply not consistent. In shaping the "fully allocated cost" concept, Congress specifically referenced the reality that the utility should recover the costs it incurs based on the attacher's

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260 47 U.S.C. § 224(d)(1); *see also* 47 C.F.R. § 1.1409(e). In drafting Section 224(e), Congress is presumed to have known what it previously did in Section 224(d)(1) and the Commission's practice of interpreting that provision as including administrative, maintenance depreciation, taxes, and a rate of return. *See Wilderness Watch v. United States Forest Service*, 143 F. Supp. 2d 1186, 1205 (D. Mont. 2000) ("In construing a statute, courts 'presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts.") (citations omitted); *see also Marchese v. Shearson Hayden Stone, Inc.*, 822 F. 2d 876, 878 (9th Cir. 1987). ("[I]t... is proper for this Court to presume that Congress was aware of the existing administrative regulations and interpretations each time it reauthorized the Act.").

261 47 U.S.C. § 224(e)(2).

262 47 U.S.C. § 224(e)(3).

263 *See Brown & Williamson Tobacco Corp.*, 153 F.3d at 161 ("[N]either federal agencies nor the courts can substitute their policy judgments for those of Congress."); *see also Nat'l Treasury Employees Union*, 452 F.3d at 865 ("The agency's policy preferences cannot trump the words of the statute.").

264 H. Rep. No. 104-458, at 206 (1996) (Conf. Rep. on S. 652).

benefit from the pole: "the entire pole . . . is of equal benefit to all entities."[265] The Commission has for more than a decade applied the Telecom Rate in a manner reflective of Congressional intent, recognizing that: (1) the fully allocated rate is different than the Cable Rate; (2) must be higher than an incremental (cost-caused) rate; and, (3) would include "operating expenses and capital costs" and takes into account both usable and unusable space.[266]

C. The Proposed Changes to the Telecom Rate Are Unreasonable and Would Have an Unfair Impact on Pole Owners

It appears that most, if not all, of the Commission's proposed rules are based on recommendations from Chapter 6 (Infrastructure) of the NBP. The NBP is a pure policy piece that notes its own limitations.[267] It is a one-sided document as evidenced by the fact that it did not mention – let alone address – a single concern raised by electric utilities in voluminous filings. Particularly in the area of the proposed "reinterpretation" of the Telecom Rate, Oncor respectfully submits that this one-sided policy piece is a flawed starting point. To propose wide-sweeping revisions to the current pole attachment regime, which already is undeniably pro-attacher, based on a policy piece, is unnecessary and unfair to electric utility pole owners and

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265 *Id.* (emphasis added).

266 *See, e.g., In re Amendment of Rules and Policies Governing Pole Attachments*, 12 F.C.C.R. 7449, 7452 (1997) (Notice of Proposed Rulemaking) (citing S. Rep. No. 95-580, 95th Cong., 1st Sess. 19 (1977)) (discussing carrying charges as including "the utility's administration, maintenance and depreciation expenses, a return on investment, and taxes"); *In re Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of Commission's Rules and Policies Governing Pole Attachments* (Notice of Proposed Rulemaking), 12 F.C.C.R. 11725 (1997)(accord); *see also Alabama Cable Telecomms. Assoc. v. Alabama Power Co.*, 16 F.C.C.R. 12209, 12231 (2001) ("The formula includes recovery for all pole-related costs, including administrative, maintenance, and tax expenses, as well as depreciation and a rate of return approved by the utility's state public service commission").

267 *See* NBP at p. 112. ("Even if the FCC implemented all of the recommendations related to its Section 224 authority, additional steps would be needed to establish a comprehensive national broadband infrastructure policy. As previously discussed, without statutory change, the convoluted rate structure for cable and telecommunications providers will persist. Moreover, due to exemptions written into Section 224, a reformed FCC regime would apply to only 49 million of the nation's 134 million poles. In particular, the statute does not apply in states that adopt their own system of regulation and exempts poles owned by co-operatives, municipalities and non-utilities.").

their electric ratepayers. Reasoned agency decision-making cannot "discriminate among industries."[268] The proposed changes to the Telecom Rate should be rejected.

The proposed changes to the Telecom Rate would have a substantial and unfair impact on Oncor's pole attachment cost recovery. If implemented, it is estimated that Oncor's Urban Telecom Rate is estimated to go from $8.62 to approximately $1.62.[269] Oncor's Rural Telecom Rate would go from $12.99 to $2.47.[270] To put it in perspective, Oncor's current Cable Rate is $5.70.[271]

Implementation of the newly proposed telecom formula would have an even more substantial effect in the future for two reasons. First, the vast majority of CATV companies are moving away from providing "solely" cable services — causing the relative number of telecommunications attachers to increase each year. Second, there is a separate fight concerning Voice Over Internet Protocol ("VOIP") services provided by CATV companies, and marketed by them as being identical to telecommunication services offered by others. In the past, CATV companies and the FCC have taken the position that VOIP service does not trigger the Telecom Rate. Oncor, on the other hand, has taken the position that VOIP constitutes a "telecommunications service." To that end, Oncor has reserved its rights through letters of

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[268] *See In re Applications of Airtouch Comms., Inc. and Vodafone Group*, 14 F.C.C.R. 9430, 9472 (June 22, 1999); *see also In re Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 12 F.C.C.R. 16802, 16835 (1997) (noting that requirements are in place to insure meaningful agency consideration of all interests, including those interests that might otherwise not be represented); *In re: Telepak Tariff Sharing Provisions of AT&T and Western Union Tele. Co.*, 8 F.C.C.2d 178 (1967) (additional investigation needed where decision could result in undue or unreasonable prejudice to any person or class of persons); *Fla. Bd. Of Business Regulation v. NLRB*, 686 F.2d 1362, 1372 (11th Cir. 1982) (finding agency action "on the distant side of arbitrary" and violating the "fundamental principle of reasoned explanation" where "two industries, identical in all comparable respects" were treated "differently").

[269] Flewharty Decl. at ¶ 42.

[270] *Id.* Importantly, the PUCT has at least impliedly rejected the historically low, subsidized Cable Rate as it mandates that a municipal utility may charge any entity, regardless of the nature of the services provided by that entity, a pole attachment rate or underground conduit rate up to the FCC Telecom Rate. *See* 16 TAC 54.204(c). The PUCT has left to municipalities all access and operational issues.

[271] *Id.*

reservation to collect what would have been paid under the existing Telecom Rate should the FCC classify VOIP as a broadband service and make it subject to the proposed Telecom Rate.[272] As the Commission is now proposing to classify VOIP as a broadband service and make it subject to the proposed Telecom Rate, Oncor's ability to collect at the existing Telecom Rate could be significantly impaired.

If Oncor were to charge its 39 cable attachers who are or could be providing VOIP services at the current Telecom Urban Rate of $8.62, the total rental for those parties would be $6.25 million.[273] If the newly proposed formula was implemented (zeroing out taxes, depreciation and rate of return), it is estimated to result in a Telecom Urban Rate of $1.62.[274] With that rate, the total rental for Oncor's cable attachers providing VOIP services would be $1.18 million, causing Oncor to potentially suffer a loss of $5.07 million in revenue just for 2010, excluding interest which Oncor is contractually permitted to collect.

The original Pole Attachment NPRM started with the accurate premise that the Cable Rate provides a subsidy for cable companies.[275] This simply confirms the legislative history and what has been acknowledged by the cable companies for a long time. To now extend the subsidy to established and profitable telecommunications attachers based on policy, unfairly favors those attachers and would be arbitrary and capricious agency decision-making.

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272 *Id.* at 43.

273 *Id.* at 44.

274 *Id.*

275 *See* NPRM, 22 F.C.C.R. 20195, ¶¶ 19-20 (Nov. 20, 2007).

XIII. THE COMMISSION SHOULD NOT EXERCISE JURISDICITON OVER ILEC ATTACHMENTS ON ELECTRIC UTILITY POLES

The Commission asks commenters to "refresh the record regarding the questions raised regarding regulation of rates paid by incumbent LECs in the [earlier NPRM] in the context of the issues under consideration here."[276]

The record is clear: the Commission lacks statutory authority to regulate any rates paid by ILECs. The text of Section 224 specifically excludes ILECs from the Commission's jurisdiction.[277] The discussion should end here.

Beyond the statutory issues, the ILEC/Oncor bilateral relationship is working well. As discussed in Oncor's Initial Comments to the NPRM, Oncor has multiple joint use agreements with 17 ILECs in its service region.[278] Because both Oncor and ILEC joint use partners own networks of poles, several of the joint use agreements are based on the concept of parity and all address some form of sharing infrastructure costs, rental rates that are set by negotiation or based on non-FCC calculations and other matters not set forth in a pole license/attachment agreement. These joint use relationships have existed for more than 80 years without Commission intervention, and should not be disturbed.[279]

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[276] FNPRM, ¶ 104.

[277] *See* 47 U.S.C. § 224(a)(5) ("For purposes of this section, the term 'telecommunications carrier' does not include any incumbent local exchange carrier. ..."); *see also In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 F.C.C.R. 6777, 6781 (FCC 1998) ("The 1996 Act ... specifically excluded incumbent local exchange carriers ("ILECs") from the definition of telecommunications carriers with rights as pole attachers. Because, for purposes of Section 224, an ILEC is a utility but is not a telecommunications carrier, an ILEC must grant other telecommunications carriers and cable operators access to its poles, even though the ILEC has no rights under Section 224 with respect to the poles of other utilities. This is consistent with Congress' intent that Section 224 promote competition by ensuring the availability of access to new telecommunications entrants.").

[278] *See* Initial Comments of Oncor Electric Delivery Company, WC Docket No. 07-245, p. 25 and Exhibit A, ¶ 11 (March 7, 2008); *see also* Flewharty Decl. at ¶ 5.

[279] For a more complete discussion of Oncor's contractual relationships with ILECs, as well as additional reasons for why the Commission cannot – and should not – exercise jurisdiction over ILECs, Oncor incorporates herein its NPRM Initial Comments. *See* Initial Comments of Oncor Electric Delivery Company, WC Docket No. 07-245, pp. 23-30 (March 7, 2008).

XIV. CONCLUSION

Oncor appreciates the opportunity to comment on these critical matters, and to provide the Commission with insight into Oncor's current practices and concerns regarding the Proposed Rules set forth in the FNPRM. There is little to no evidence that there is a pole access problem for broadband deployment. There is no evidence that the Proposed Rules would enhance broadband deployment. In contrast, electric utilities (recognized by the Commission as having the best interest of the infrastructure at heart) have raised real safety and reliability issues supported by hard data and compelling evidence. Reasoned agency decision-making should give great weight to the electric utilities' concerns. Especially where, as here, the problem is limited, the reform is substantial, the likelihood of success is minimal (if not non-existent) and the potential detrimental impact of the reform is great. Oncor urges the Commission to recognize its jurisdictional and subject matter limitations and reject the Proposed Rules as set forth herein.

Oncor looks forward to offering further comments and evidence in reply to the comments submitted by other interested parties.

Respectfully submitted,

/s/ J. Russell Campbell

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August 16, 2010

EXHIBIT A

Before the
Federal Communications Commission
Washington, D.C., 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	**WC Docket No. 07-245**
A National Broadband Plan for Our Future	)	**GN Docket No. 09-51**
	)	
	)	

DECLARATION OF KAREN FLEWHARTY

1. My name is Karen Flewharty. I am currently employed by Oncor Electric Delivery Company LLC ("Oncor") as Joint Use Manager. This declaration is based on my personal and professional knowledge, as well as knowledge available to me in my capacity as Joint Use Manager for Oncor.

2. I have been the Joint Use Manager for Oncor for 6 years, and have been with the company for a total of 12 years. Prior to becoming Joint Use Manager, I worked in the Distribution Operations Dispatch Center as a support engineer. I also worked in the distribution design organization and managed large scale maintenance programs.

3. As Joint Use Manager, I am responsible for the development and implementation of pole attachment policies and procedures, management and performance of our permitting contractor, as well as development and execution of Oncor's joint use agreements.

4. My declaration addresses certain issues impacting the safety and reliability of Oncor's distribution system. I offer this testimony in support of the initial comments filed by Oncor in response to the Further Notice of Proposed Rulemaking (*Implementation of Section 224 of the Act; A National Broadband Plan for our Future; Proposed Rule*, WC Docket No. 07-245, GN Docket No. 09-51 (July 15, 2010)).

Who is Oncor?

5. Oncor is a public utility company distributing and transmitting electric service in more than 400 cities and 91 counties in Texas, nearly half of the state's geographic area. Oncor's current service area includes the Dallas-Fort Worth metro area, as well as Odessa, Midland, North Austin, Round Rock, Killeen, Waco, Wichita Falls and Tyler. Oncor operates the largest distribution and transmission system in Texas, providing power to 3 million homes (more than 7 million customers) and thousands of businesses over more than 116,000 miles of transmission and distribution lines in Texas. Oncor owns approximately 2 million distribution poles, with approximately 1.2 million poles (60%) having at least one communications attachment. Oncor has 177 foreign attachers. Oncor has a large number of attachments owned by numerous attachers that are not governed by the FCC including: 514,487 attachments by 17 ILECs, 14,493 by 35 city/government agencies, 2,274 by 23 Independent School Districts, and 111 by 11 private businesses. Oncor is attached to approximately 400,000 poles owned by other entities.

6. Oncor has approximately 755 wireless attachments from 3 different attachers.

7. Oncor's actual data and experience shows that its average number of attaching entities on poles in rural areas is approximately 2.3. Oncor's data and experience shows that the average number of attaching entities in the urban areas in its service territory is approximately 3.

8. Oncor is currently participating in the following projects in its service area that (1) have already been funded (through American Recovery and Reinvestment Act stimulus money) and (2) are targeted toward further rural broadband deployment: (a) Level 3 EON, LLC will spend $4,677,788 building 17 new access points on its existing network to enable last mile providers to offer affordable high-speed services to underserved areas; potentially reaching

400,000 new homes; (b) PRIDE Network, Inc., will spend $21,829,549 constructing an FTTP telecommunications infrastructure that will bring advanced broadband to rural communities with the Texas South Plans region; and (c) PRIDE Networks, Inc., will also spend $6,309,931 bringing advanced broadband services to rural communities in Burkburnett and Iowa Park, Texas. Similar stimulus projects are planned for Allegiance Communications (more than 680 miles of new fiber in 35 communities in underserved areas in Arkansas, Kansas, Oklahoma and Texas) and Wes-Tex Telephone Cooperative (targeting rural areas of West Texas).

Oncor's Obligations as an Electric Service Provider

9 As an electric utility, Oncor must comply with the safety and reliability standards established by the Public Utility Commission of Texas ("PUCT"). The PUCT has established specific reliability standards that Oncor must meet.

10. If Oncor fails to meet PUCT reliability standards, it is subject to PUCT fines. Each year, the PUCT provides a penalty matrix reflecting the amounts to be assessed for failure to meet PUCT-mandated reliability standards. The matrix contains penalties for system-wide violations, as well as per feeder violations. For example, a $16,000 penalty is assessed for a violation of System Average Interruption Duration Index standards for the reporting year and $25,000 for consecutive years. The same amount is assessed for a system-wide failure to meet System Average Interruption Frequency Index requirements. A per feeder violation is also assessed (ranging from $500-$25,000 per feeder, depending on whether it is a first violation) for failure to meet SAIDI and SAIFI requirements.

Oncor's Attacher Access Process

11. Oncor is not in commercial or retail competition with CATV or CLEC attachers.

12. Oncor works closely with its attachers to minimize time and costs related to the permitting process. Oncor has found that the more directly it works with each attacher at the local level, the better the access and attachment processes work. Oncor understands its attachers' desire to get to market as quickly as possible and strives to help its attachers meet their goals. Where issues arise, Oncor works with its attachers to find solutions.

13. Based on Oncor's experience, attachers are granted access and make-ready is performed in a timely manner. Since 2000, Oncor has permitted attachments to 251,673 poles – or about 21% of its jointly occupied pole inventory. On average, Oncor is processing permits that allow attachments to over 25,000 poles per year (or 481 poles per week). For Oncor's part in the permit application process, in 2009 through year-to-date 2010, Oncor has responded to permit applications on average within 37 days.

14. To assist in the efficient management of permit applications, Oncor's standard attachment agreements limit permit applications to no more than 10 applications within thirty days (with collectively no more than 120 poles). Oncor also requires attachers to prioritize applications when submitting more than one. This has been Oncor's practice for more than 15 years.

15. For significant projects or urgent requests, Oncor has worked with attaching entities to develop staged submissions and other custom protocols.

Performance of Make-Ready

16. Oncor typically provides the make-ready estimate along with the permit response within 45 days of receipt of a complete permit application.

17. Oncor typically does not perform communications space make-ready.

18. Many factors can affect the access and make-ready process. These factors include, without limitation, weather, timely payment of make-ready expenses, permitting related to highways and railways, and actions (or lack thereof) of other attachers.

19. In Oncor's experience, parties must have flexibility during the access and make-ready processes to accommodate circumstances beyond Oncor's control. For example, in June 2004, a severe storm caused 14,842 outages affecting 1,407,760 Oncor customers. Some outages lasted for ten days. Again, in February 2010, a snowstorm caused 6,245 outages affecting 529,048 Oncor customers. Some outages lasted for six days. In addition to many mutual assistance and off-system contract construction resources, all of the available Oncor and contract crew personnel on the system were working full time to restore power for the six-day period. The degree of storm restoration required and the enormous amount of resources involved delayed ongoing make-ready projects for several days. The June 2004 and February 2010 storms are two of the largest recent storms to hit Oncor's system.

20. If performance of make-ready for an attacher on a pole line requires that a certain set of customers (*i.e.*, large shopping center or hospital) suffer an outage for a period of time, Oncor must provide notice to the affected customers and work with those customers to establish a mutually agreeable time for the outage. This is referred to as obtaining the necessary "customer clearance." For example, an attacher (Grande Communications) recently had an ongoing project in Waco, Texas. Oncor had anticipated the work activity would be completed on July 16, 2010, but there was a secondary service riser that had to be moved to a new pole installed as a result of Grande's permit application. The transfer of the riser involved setting up an electric service clearance with a customer who requested time to make arrangements for the clearance and chose a time frame that added three weeks to Oncor's work schedule for

completion of the work. In this type of situation, the attacher has the option to wait, to simply go underground or to select a different route.

21. Oncor has no control over the timeline when the requested make-ready requires obtaining a permit in a highway right-of-way or over a railroad track. On average, it takes 3 months for a railroad to grant a permit. Oncor tries to make its attachers aware of potential issues up-front so the attacher knows its options. However, the granting of permits in this situation is completely outside Oncor's control.

22. From 2009 to date 2010, only 3.8% of the total poles permitted by Oncor required make-ready work. However, approximately 20% of poles permitted for wireless attachments required capacity expansion.

Make-Ready Payment

23. Oncor's procedures require up-front payment of make-ready charges. This has been Oncor's policy for over 10 years and has resulted in approximately 251,673 poles being permitted during that time period. Oncor also requires up-front payment when an electric customer requests work by Oncor (*e.g.*, installation of a street light, service drop relocation, undergrounding, etc.). In my experience, Oncor's requirement of up-front make-ready is consistent with industry custom and practice.

24. Oncor has experienced situations where an attaching entity has abandoned a make-ready project before completion.

25. Oncor has offered to allow an attacher with a large project to establish an account (with a minimum balance) that Oncor can withdraw from to fund make-ready. For example, in 2003, Comcast had a significant upgrade project in Dallas that required permitting of 20,000 poles. Comcast had a contractual deadline with the city. Oncor agreed to work with Comcast.

Among other things, Oncor allowed Comcast to set up a make-ready deposit from which Oncor could draw to access dedicated crews to upgrade Comcast's system in Dallas. The project was completed successfully. Similar cooperation was recently exhibited in Midland, Odessa and Waco, Texas where Oncor worked with Grande Communications on major upgrade projects.

26. Due in part to the requests of attaching entities, Oncor recently put in place unit pricing for the make-ready inspection phase (displacing the previous practice of time and mileage billing). As set forth in the notification letter provided to Oncor's attachers, the unit pricing was adopted with the expectation that it would result in "better billing, planning transparency as well as better service costs accountability and efficiency" and the hope that it would enable attaching entities to "better budget . . . new build and upgrade projects." Oncor provides the unit-pricing information to attaching entities on request. Oncor's services and materials agreements contain provisions allowing its vendors to increase estimated cost items.

Use of Approved Contractors

27. Oncor's long-standing practice is to allow approved contractors to make compliant post make-ready attachments in the communications space. Oncor does not oppose approved contractors working in the communications space. In my experience, these positions are consistent with industry custom.

28. Oncor approves power space contractors all the way down to the individual level on a case-by-case situation. Oncor does this to ensure that, among other reasons, no one working on its infrastructure has previously been removed from the system for unsafe practices, causing damage, etc. When an Oncor approved contractor wishes to hire an additional employee, the approved contractor confers with Oncor to ensure the individual is eligible to work on Oncor's system.

29. To accommodate special needs of its attachers, Oncor offers several options such as use of dedicated crews, overtime, transfer agreements, and joint operating agreements. In Oncor's experience, attachers often choose to forego the dedicated crew and overtime options on the basis that they do not want to pay the additional expenses associated with these options.

30. A few of Oncor's attachers have taken advantage of the transfer agreements and joint operating agreements. Oncor is currently working with its primary maintenance and construction contractor to obtain agreements with several of its attachers for communications space work. This effort seeks to have communications space transfers performed while Oncor's contractor is at the pole doing power space make-ready work.

31. Oncor has a transfer agreement with Charter, AT&T and the City of Fort Worth for purposes of a limited pilot project in the Benbrook Service Center. Pursuant to the transfer agreement, Oncor's employees perform the necessary work to include transfer of the attacher's simpler (tangent) facilities when required for a set per attachment fee. The project has been in place for almost two years and appears to be working well. From August 18, 2008, to August 5, 2010, Oncor has performed 262 transfers for AT&T, 283 for Charter and 57 for the City of Fort Worth. Through this process, Oncor has been able to ensure that fewer obsolete poles are left in place – a significant problem arising from attachers' delay in making necessary transfers.

32. Attachers often wait until the last minute to submit permit applications, despite the fact the project has been in the works for a number of months (if not years) and despite Oncor making it clear to attachers that their plans are confidential and that Oncor will not share the information with other attachers.

33. In Oncor's experience, there are no "excess contractors" waiting for work for many reasons, including the fact that the contractors must have special training and require and

use expensive equipment. During the storm restoration process, Oncor often has to obtain the necessary workers by requesting that other contractors, less frequently used by Oncor, be temporarily released from their obligations to other electric utilities. These are not open-market type contractors.

34. Oncor has executed agreements with 15 existing approved contractors. Oncor's agreements with its approved contractors set out specific requirements each approved contractor must meet including, without limitation:

- Provide Emergency Services when required;
- Prepare and provide reports pertaining to the performance of its obligations sufficient to permit Oncor to monitor and manage performance;
- Provide Oncor with the right to accept or reject all services not provided in accordance with the agreement, establish a process for correcting any non-conforming services and reimburse Oncor for any expenses incurred as a result of non-conforming services;
- Establish a specific procedure for problem analysis;
- Develop and implement quality assurance processes and procedures approved by Oncor;
- Participate in monthly, quarterly and annual meetings (which include different Management levels) when performing work with Oncor;
- Maintain complete and accurate record of, and supporting documentation related to, the contractor's services and performance of obligations;
- Provide Oncor with priority over all other contractor customers when a disaster or major event occurs causing an issue with resource allocation; and
- Execute indemnification provisions, protecting Oncor.

35. Each approved contractor's agreement with Oncor requires that the contractor perform its obligations in compliance with the applicable Oncor Policies and Standards.

Unauthorized Attachments

36. In Oncor's experience, unauthorized attachments are a widespread problem which threatens the safety and reliability of its infrastructure. Oncor's 2007-2008 pole attachment count revealed 31,139 unauthorized attachments. As a result of the 2007-2008 attachment count results, a total of 24 attachers paid a total of $1.2 million for those unauthorized attachments.

37. In an effort to deter unauthorized attachments, Oncor's pole attachment agreements provide for a $25 per unauthorized attachment fee, in addition to back rent, with interest. Attachers often cite the Commission's prior precedent of awarding only back-rent plus interest when challenging Oncor's unauthorized attachment fee. Oncor must constantly defend its contractual entitlement to the unauthorized attachment fees. Oncor often must accept less than it is contractually entitled to receive in order to avoid litigation.

Availability of Data

38. Currently, upon request and at the requesting party's expense, Oncor provides two-dimensional maps reflecting pole location and street. Pursuant to certain city ordinances, Oncor is sometimes required to provide maps and/or other information regarding its pole locations. These maps are provided under confidentiality protections.

39. Oncor does not have a database capable of gathering and maintaining the type of information I understand to be envisioned in the FNPRM (*i.e.*, the availability of poles, ducts, conduits and rights of way). Oncor would have to create the electronic tools to gather and maintain the requested information before Oncor could provide the information requested in the FNPRM.

40. Oncor estimates that the cost to create the type of complex web tool or database necessary to gather and store the requested information would be at least $500,000. In addition to that cost, the actual "inventory" would require Oncor to survey approximately 2 million poles. Oncor can likely inventory 20% of poles per year over a five-year period. Oncor would be required to take detailed measurements of multiple dimensions (including weight) and evaluate each pole to ensure accuracy of the information to be reported at the time of the inventory. Oncor estimates that the cost of this inventory would be at least $20 per pole (if not much more), for an estimated initial total cost of no less than $40 million.

41. The condition of Oncor's poles constantly changes based on many factors, including additional foreign attachments, unauthorized attachments, removal of attachments, etc. It is currently not possible to track and maintain the requested data in real time. The "inventory" would not dispense of the need to conduct actual field surveys to determine the availability of pole space.

The Impact of the Proposed Telecom Formula on Oncor

42. The proposed changes to the Telecom Rate would have a substantial impact on Oncor's pole attachment cost recovery. If implemented, Oncor estimates that its Urban Telecom Rate would go from $8.62 to $1.62 and its Rural Telecom Rate would go from $12.99 to $2.47. Oncor's current Cable Rate is $5.70.

43. The proposed changes to the Telecom Rate could also impact Oncor's ability to collect rentals concerning Voice Over Internet Protocol ("VOIP") services being provided by CATV companies. Oncor takes the position that VOIP constitutes a "telecommunications service." To that end, for the past 2 years, Oncor has reserved its rights through letters of

reservation to collect what would have been paid under the existing Telecom Rate should the FCC classify VOIP as a broadband service and make it subject to the proposed Telecom Rate.

44. If Oncor were to charge its 39 cable attachers who are or could be providing VOIP services at the current Telecom Urban Rate of $8.62, based on its reservation of rights to do just that, the total rental for all parties would be $6.25 million. If the proposed formula were implemented (zeroing out taxes, depreciation and rate of return), it is estimated to result in a Telecom Urban Rate of $1.62. With that rate, the total rental for Oncor's cable attachers providing VOIP services would be $1.18 million, causing Oncor to potentially suffer a loss of $5.07 million in revenue just for 2010, excluding interest which Oncor is contractually permitted to collect.

45. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true to the best of my knowledge.

Executed on the 16th day of August, 2010.

Karen Flewharty

Karen Flewharty
Joint Use Manager
Oncor Electric Delivery Company LLC

EXHIBIT B

Before the
Federal Communications Commission
Washington, D.C., 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	**WC Docket No. 07-245**
A National Broadband Plan for Our Future	)	**GN Docket No. 09-51**
	)	
	)	

DECLARATION OF WAYMON GUITON

1. My name is Waymon Guiton. I am currently employed by Oncor Electric Delivery Company LLC ("Oncor") as a Consulting Engineer in the Distribution Standards Group.

2. This declaration is based on my personal and professional knowledge, as well as knowledge available to me in my capacity as a Consulting Engineer for Oncor.

3. I have been a Consulting Engineer for Oncor for over three years, and have been with the company for a total of 41 years. My job responsibilities as a Consulting Engineer include the following, among others: (1) design and equipment standards; (2) distribution equipment and construction related policy and interpretation; (3) National Electrical Safety Code interpretation; and (4) information interface between the distribution equipment and Oncor's Distribution Information System ("DIS").

4. My declaration addresses certain issues impacting the safety and reliability of Oncor's electric distribution system, specifically Oncor's standards and practices regarding the attachment of wireless equipment to its poles. I offer this testimony in support of the initial comments filed by Oncor in response to the Further Notice of Proposed Rulemaking

(*Implementation of Section 224 of the Act; A National Broadband Plan for our Future; Proposed Rule*, WC Docket No. 07-245, GN Docket No. 09-51 (July 15, 2010)).

5. Oncor's standards for wireless attachments differ from its standards for wireline attachments. For example, additional clearance requirements must be satisfied for wireless or Wi-Fi equipment. Oncor has specific standards and specifications for wireless attachments which are attached hereto as Attachment 1.

6. The wireless attachments on Oncor's poles vary in the type of equipment, as well as the location of the equipment on Oncor's poles. Each piece of wireless equipment differs in power outlet, dimension, height, weight, antenna size/location, power supply, photocell, etc.

7. The antennas requested to be installed on Oncor's poles vary in size from .7 lbs to 45 lbs. and from .6" to 24" in diameter. Overall, the antennas vary from 24" to 78" in height and from 13.75" to 36" in width. Oncor has received requests to install wireless equipment (other than antennas) weighing up to 217 lbs.

8. The photographs contained in Oncor's Initial Comments, and attached to this declaration as Attachment 2, reflect just a few examples of the various wireless facilities installed on Oncor's system.

9. In Oncor's experience, each of Oncor's wireless attachers changes its attachment techniques and/or equipment on average at least once a year.

10. In Oncor's experience, a wireless attachment is not just one point of connection on a pole with a single wire attached to it. Wireless equipment typically occupies more space on a pole than a standard wireline attachment due to the antenna being considered an energized conductor that cannot encroach on the communication workers safety zone. Additional pole height may be required because the antenna is mounted inverted on a bracket arm and the

antenna tip becomes the lowest item in the supply space requiring a minimum of 40" of separation to the nearest communication cable. Wireless attachments typically require a pole change-out which, in turn, requires the performance of additional make-ready.

11. Oncor requires that its wireless and wireline attachers comply with the same application process. As part of this process, Oncor collects information on the type of equipment to be attached, the type of poles (or any other desired location) on which the equipment is to be attached, the dimensions of the equipment, the weight specifications, the location of the intended attachments, as well as other data. Oncor must also consult with the manufacturer of the poles to which the equipment is to be attached to determine whether the equipment will exceed the structure's capabilities.

12. When meeting certain criteria, Oncor allows wireless attachments to be made on a street light or on a street light bracket arm. If attaching to an Oncor steel street light pole, an attacher can only attach to the steel pole or the existing bracket arm that the existing street light is on. No additional bracket arms are permitted on steel street light poles. In this situation, Oncor must consult with the manufacturer of the pole and the manufacturer of the street light and/or bracket. On Oncor's wood poles, a 4' bracket arm may be added for a wireless attachment if there is not an existing street light and/or bracket arm to which to attach. When a wireless attacher desires to so attach, again, Oncor must consult the manufacturer of the street light and/or bracket arms to determine whether the attachment would exceed structural capabilities. Oncor must also consult its civil engineer regarding wood pole structural loading. If the capabilities of the pole, street light or bracket arm will be exceeded, the manufacturers relay that information and Oncor notifies the attacher.

13. At other times, due to the weight of some of the wireless equipment (Oncor has received requests to attach wireless equipment to a pole in excess of 200 pounds), loading can be an issue and must be analyzed in significant detail before a proposed attachment can be approved.

14. The unique and ever changing wireless equipment requires Oncor to undergo this process for each new wireless attacher, as well as each time an attacher changes its equipment or revises its design.

15. Once the information discussed in Paragraphs 12-15 above is collected, Oncor determines whether the requested wireless attachments are permitted by its standards and specifications.

16. When the wireless equipment does not meet Oncor's standards and specifications (or where the manufacturer determines that the pole or street light/bracket cannot support the proposed attachments), the attacher has the option to, without limitation: revise the attachment to meet the specifications, attach to a different pole, pay for the necessary make-ready (where make-ready is an option) or contact a private party in the same area and seek to attach to their building or other structure.

17. In August 2009, NextG Networks, one of Oncor's wireless attachers, sought approval to attach a 48" antenna. NextG also requested permission to attach mounting brackets (or pole top extensions) directly on top of street lights or service drop poles. Oncor initially rejected NextG's requests because Oncor, as a general rule, does not utilize pole top extensions for several reasons. First, the top of a wood pole will weather over time. As the top of the pole weathers, it loses strength and often allows hardware to become loose. Second, a pole top extension can drastically increase the load being applied to a pole top that has reduced strength.

Finally, utilizing a pole top extension would require Oncor to reframe existing poles by lowering the crossarm/brace and moving the center phase electrical wire onto the arm. Oncor expressed its concerns to NextG. With consultation, the parties were able to successfully revise the equipment to meet Oncor's specifications and complete the project.

18. In Oncor's experience, the wireless attachment process is working well to accommodate the needs of both Oncor and its attachers.

19. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true to the best of my knowledge.

Executed on the 16th day of August, 2010.

Waymon Guiton

Waymon Guiton
Consulting Engineer, Distribution Standards Group
Oncor Electric Delivery Company LLC

ATTACHMENT 1

WIRELESS COMMUNICATION EQUIPMENT ATTACHMENT REQUIREMENTS

103 - 250
05-07

1.0 General

A. The bottom of an equipment cabinet or other equipment mounted on a pole must meet NESC guidelines for ground clearance (NESC Rule 232 B). Equipment mounted on a pole requires a clearance of 16 feet above a street and 11 feet above a sidewalk from the bottom of the equipment.

B. Equipment owner shall attach their name and a 24 hour contact phone number to each wireless unit.

C. All additional equipment installed on Oncor Electric Delivery poles must comply with Oncor Electric Delivery Standards, as well as any other Standards or requirements specified for those attachments in the License Agreement.

D. Wireless communication applicants shall provide an evaluation of proposed wireless units to determine compliance to FCC guidelines for human exposure to radiofrequency fields. Evaluations shall be performed with regards to uncontrolled exposures in the near field and far field regions. Evaluations shall be provided for new installations and whenever the transmitting power of existing equipment is increased.

E. Means shall be provided to safely disconnect equipment to limit exposure to radiation as per FCC OET Bulletin 65 when evaluations of emitted radiation exceed the limits for uncontrolled exposure. If a disconnect is required, warning signs per note 9 of Pole Top Antenna Standard 103-255 shall be required.

2.0 Bonding

Wireless communications equipment must be bonded to every pole with #6 S.D. bare copper bonding wire in accordance with Oncor Electric Delivery Standard 103-235, unless otherwise provided for in the License Agreement.

3.0 Connection to Power Source

A. Power for equipment installed on a street light or decorative pole must be obtained from an existing photocell. Decorative poles generally have post top luminaries and do not facilitate connection of external equipment to the photocell.

B. Insulated conductors with a jacket enclosing the entire cable assembly shall be used.

C. Power cable assemblies on bracket arms between the photo cell and the wireless unit must be banded to the bracket arm or pole, as required.

D. On a wood pole, the power cable assemblies must be enclosed in one (1) inch, schedule 80 PVC conduit between the power source and the wireless unit. The conduit shall be attached to the pole with straps installed every five (5) feet.

4.0 Equipment Mounting – Wood Poles

A. Equipment shall only be installed on poles which do not have power utility equipment installed (i.e. transformers, capacitors, conduit risers, etc.). Exceptions must be evaluated on a case by case basis.

B. Equipment larger than specified by Oncor Electric Delivery Standard 103-235 must be mounted such that it stands off the pole a minimum of four inches to allow required pole climbing clearances. Equipment boxes exceeding 24" x 18" x 12" shall NOT be mounted on distribution poles without prior approval of Oncor Electric Delivery – Distribution Standards.

WIRELESS COMMUNICATION EQUIPMENT ATTACHMENT REQUIREMENTS (CONT'D)

103 - 251
05-07

4.0 Equipment Mounting – Wood Poles (cont'd)

C. All equipment boxes located on a pole, new or existing, must be mounted on the same side of the pole to maintain clearances for climbing.

D. Equipment may be attached on an approved bracket arm or may be attached directly to the pole provided appropriate stand off requirements are met. Dedicated equipment/antenna support brackets shall not exceed eighteen inches in length unless the bracket meets the requirements outlined in 103-256 or 103-257.

5.0 Equipment Mounting - Metal or Fiberglass Poles

A. A 100 mph wind load shall be utilized in calculating the strength requirements of streetlight poles. The streetlight pole must be able to support any ancillary attachments under those conditions without structural failure of the pole, the foundation, or any of its components. The weight and exposed cross sectional area of any proposed attachments shall be analyzed before approval.

B. If the pole base is direct embedded, Oncor Electric Delivery Standards 213-316 and 213-317 require that the pole be stabilized. The wireless attacher will be responsible for all charges related to this work.

C. The training of communication cables, wires, or fiber through the interior of streetlight poles is prohibited.

D. Drilling of **any** additional holes into metal or fiberglass streetlight poles or associated equipment is prohibited. Any equipment to be mounted on such poles must be banded to the pole using stainless steel banding material. The only exception permitted is the use of a set screw for grounding of equipment on metal poles.

E. A self tapping set screw must be used for grounding on metal street light poles. No grounding is required for equipment installed on fiberglass poles.

6.0 Equipment Mounting - Decorative Poles

A. Antique Historical poles and most other decorative poles are typically not tall enough to allow the installation of additional equipment on the pole and meet required clearance guidelines.

B. Because the decorative historical type poles are usually installed for aesthetic reasons, the wireless attacher should notify the associated City of its intent to attach to these types of poles.

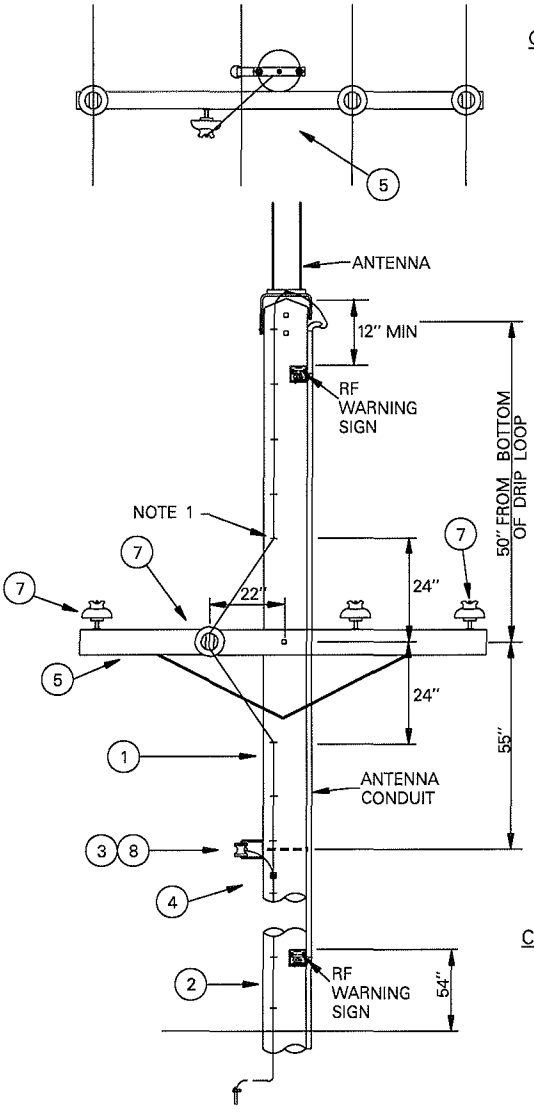
7.0 Equipment Mounting - Metal Street Light Bracket

A. A wireless unit may be attached to a streetlight bracket arm or directly to the pole. The impact of the additional weight from the unit will be evaluated to determine if the unit can be mounted on the bracket or must be mounted on the pole.

B. If attached to the street light bracket arm, the wireless unit must be no more than 3 feet and no less than 6 inches from the pole the bracket arm is mounted to.

103 – 255
12 – 06

CROSSARM CONSTRUCTION
POLE TOP ANTENNA



GENERAL NOTES:

1. The design and mounting requirements of all antennas must be approved by TXU Electric Delivery–Distribution Standards prior to installation.
2. Antenna must be installed by a TXU Electric Delivery approved contractor that is qualified to work in supply space.
3. No work shall be completed in the supply space without prior approval of local TXU Electric Delivery–Operations.
4. All pole locations must be approved by TXU Electric Delivery prior to installation.
5. Antennas shall be installed on tangent poles only. Antennas should not be installed on equipment poles. All poles must be bucket truck accessible.
6. The minimum size of all antenna poles will be ANSI Class 3. TXU Electric Delivery–Distribution Standards shall be contacted to determine the required pole class when the pole height above ground exceeds 60 feet.
7. The height of all poles used to mount antennas must be increased by a minimum of five (5) feet above the existing pole's height.
8. Only one (1) antenna shall be installed per pole.
9. When required, two (2)RF Warning Signs must installed. A sign shall be installed near the pole top at the level where the safe approach distance ends for FCC Occupational/Controlled Class Limits. The second sign shall be installed near the base of the pole. These signs should read "WARNING – ANTENNA RADIATION. MINIMUM APPROACH DISTANCE IS XX FEET. The sign should include the antenna owner's name and phone number.
10. If an antenna pole is topped for installation the untreated pole top must be treated and covered in accordance with Construction Standard 106–270 "Top Treatment for Wood Pole".
11. Antenna coaxial cable must be installed in Sch. 80 PVC conduit (two (2) inch maximum diameter). Conduit attachment straps should be installed every five (5) feet.
12. The antenna power source must have a lockable disconnect installed to allow the antenna to be de–energized before work is completed within the area designated by the RF warning signs.
13. Disconnect, meter, and antenna boxes must be installed in accordance with Construction Standard 103–235 "Supply and Communication Equipment".

CONSTRUCTION NOTES:

1. DOUBLE STAPLE TO SECURE POLE GROUND.
2. DISCONNECT ANTENNA POWER WHEN WORKING WITHIN SAFE APPROACH DISTANCE DEFINED ON RF WARNING SIGNS.
3. DRIVEN POLE GROUND REQUIRED AT EACH ANTENNA POLE.

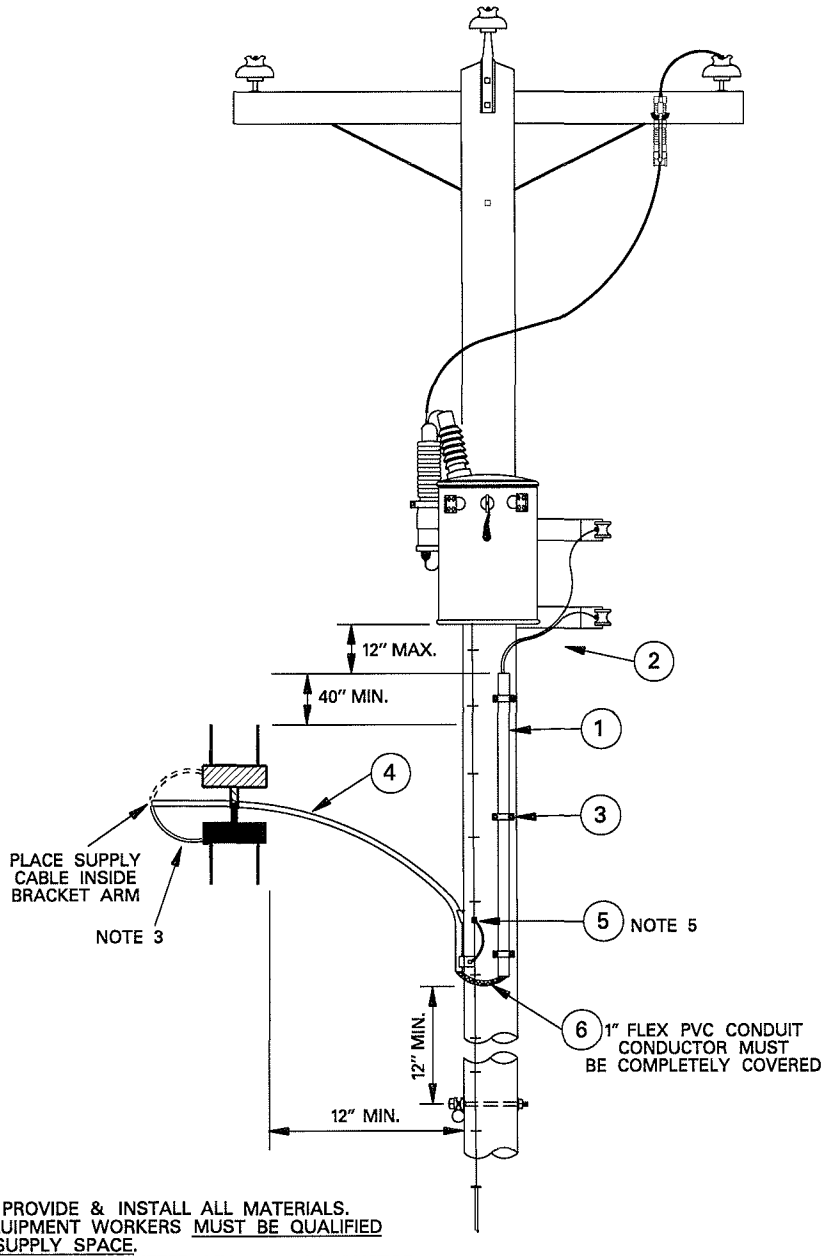
ITEM	QTY	DESCRIPTION	TSN/REF	CU	MU
1	1	POLE (AS REQ'D)	SECTION 6	PWO_ _ _	PW_ _ _
2	1	GROUND, DRIVEN	105–400	GDRI6365	
3	1	RACK, SECONDARY, 1 POINT	108–110	ROP	
4	2	CONNECTORS	SECTION 9		
5	0 – 1	SINGLE, STD XARM, LIGHT CONSTRUCTION	108–125	CSSL	
5	0 – 1	SINGLE, STD XARM, HEAVY CONSTRUCTION	108–140	CSSH	
6	4	TIES, CONDUCTOR	109–205	CTPIT_ _	
7	4	INSULATOR, CROSSARM PIN ASSEMBLY, 14.4/24.9 KV	108–100	PIS25	
8	1	TIES, NEUTRAL	109–211	SIT_ _	

APPROVED BY

TXU Electric Delivery

ANTENNA MOUNTED IN COMMUNICATION SPACE

103 – 256
09 – 06



NOTE:

1. CUSTOMER TO PROVIDE & INSTALL ALL MATERIALS.
2. TO INSTALL EQUIPMENT WORKERS MUST BE QUALIFIED TO WORK IN SUPPLY SPACE.
3. SUPPLY CABLE MUST BE JACKETED MULTIPLE CONDUCTOR, JACKET MUST ENCLOSE ENTIRE CABLE ASSEMBLY.
4. ONLY 1 PIECE OF EQUIPMENT SHALL BE MOUNTED ON THE BRACKET ARM.
5. BRACKET ARM SHALL BE BONDED TO POLE GROUND WITH #6 S.D. BARE COPPER CONDUCTOR.

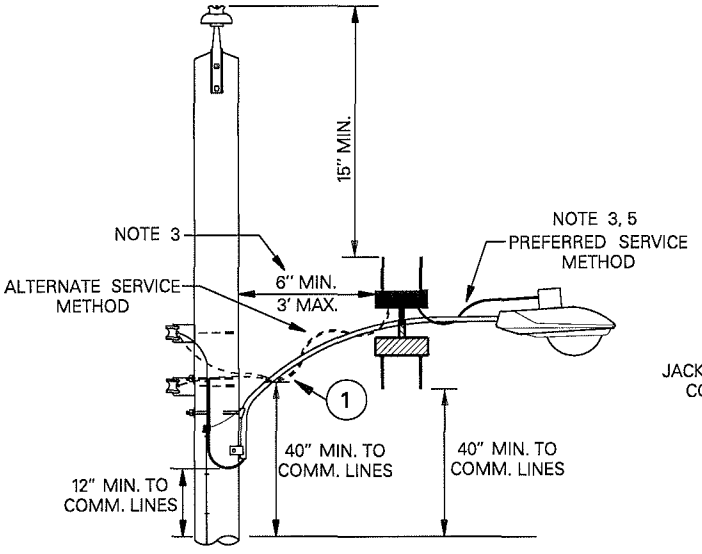
ITEM	QTY	DESCRIPTION	TSN/REF	CU	MU
1		MOULDING, 1" WOOD OR 1" SCH 40 PVC			
2		JACKET MULTIPLE CONDUCTOR CABLE			
3	3	STAPLES, WOOD MOULDING OR GALV PIPE STRAP 2 HOLE FOR 1" CONDUIT			
4	1	BRACKET, 4', WOOD POLE MOUNT, 1.25" DIA, 19" RISE, GALV			
5	1	CONNECTOR TO ATTACH TO POLE GOUND			
6		CONDUIT, FLEX, 1"			

APPROVED BY

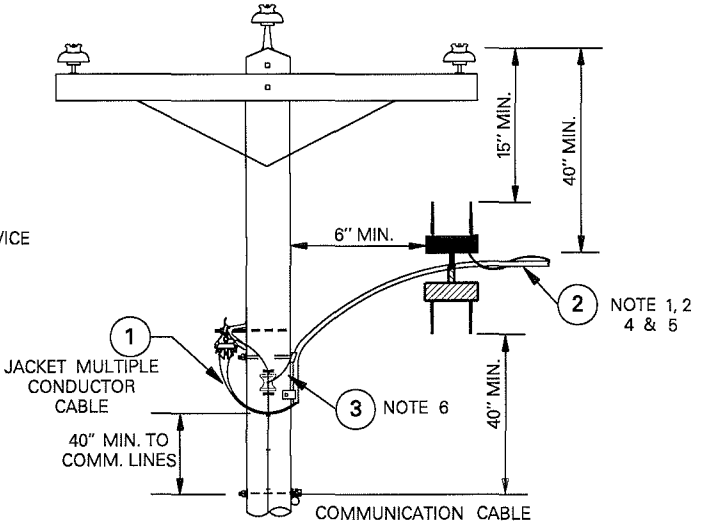
TXU Electric Delivery

ANTENNA MOUNTED IN SUPPLY SPACE

103 - 257
06 - 07



EXISTING OPEN WIRE SECONDARY & STREET LIGHT



CABLE SECONDARY, NO STREET LIGHT

NOTE:

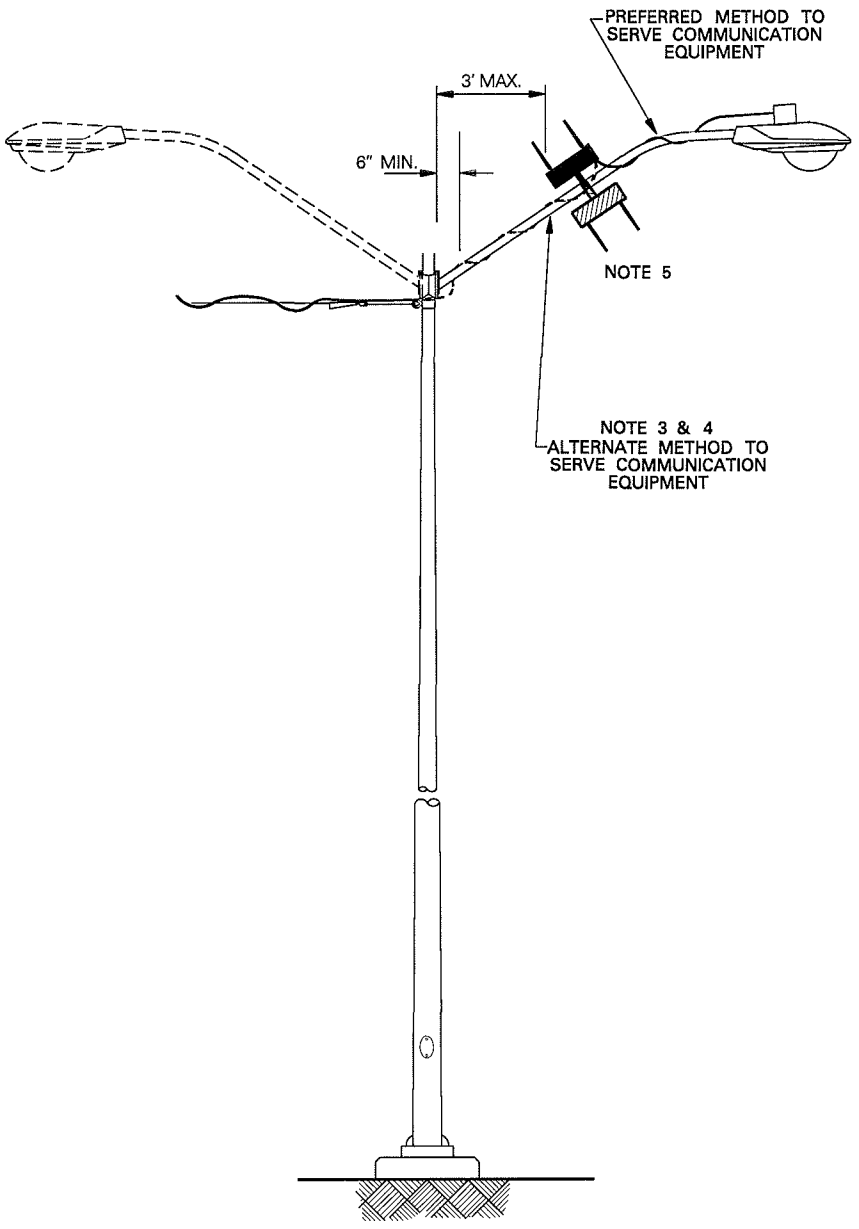
1. SUPPLY CABLE FOR PACKET ANTENNA & COMMUNICATION EQUIPMENT TO BE JACKETED MULTIPLE CONDUCTOR CABLE.
2. IF THERE IS NO EXISTING STREET LIGHT BRACKET ARM USE BRACKET ARM LISTED IN ITEM 2. WHEN A BRACKET ARM IS INSTALLED SOLELY TO MOUNT COMMUNICATION EQUIPMENT THE JACKETED MULTIPLE CONDUCTOR SUPPLY CABLE SHOULD BE INSTALLED INSIDE THE BRACKET ARM. SEE SHEET 103-256.
3. MAX. WEIGHT OF COMMUNICATION EQUIPMENT NOT TO EXCEED 15 LBS. WHEN INSTALLED ON EXISTING STREET LIGHT BRACKET ARM. COMMINICATION EQUIPMENT TO BE INSTALLED A MAXIMUM OF 3' FROM POLE ON EXISTING BRACKET ARM.
4. CUSTOMER TO PROVIDE & INSTALL BRACKET ARM, CONNECTORS & JACKETED MULTIPLE CONDUCTOR CABLE AS REQUIRED.
5. TO INSTALL & MAINTAIN EQUIPMENT WORKERS MUST BE QUALIFIED TO WORK IN SUPPLY SPACE & USE SUPPLY WORK RULES & METHODS.
6. BRACKET ARM SHALL BE BONDED TO POLE GROUND WITH #6 S.D. BARE COPPER CONDUCTOR.

ITEM	QTY	DESCRIPTION	TSN/REF	CU	MU
1		JACKET MULTIPLE CONDUCTOR CABLE			
2	1	BRACKET, 4', WOOD POLE MOUNT, 1.25" DIA, 19" RISE, GALV			
3	1	CONNECTOR TO ATTACH TO POLE GOUND			

APPROVED BY ONCOR

ANTENNA MOUNTED ON STREET LIGHT BRACKET ARM

103 – 258
06 – 07

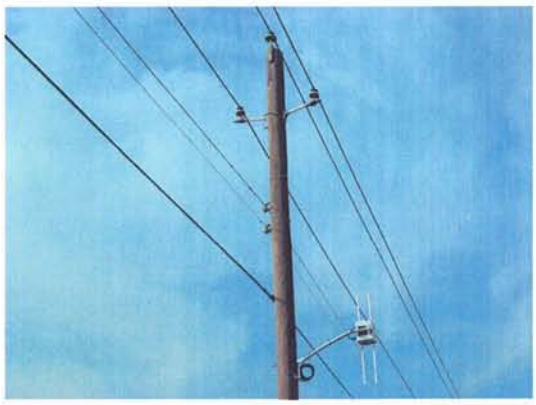


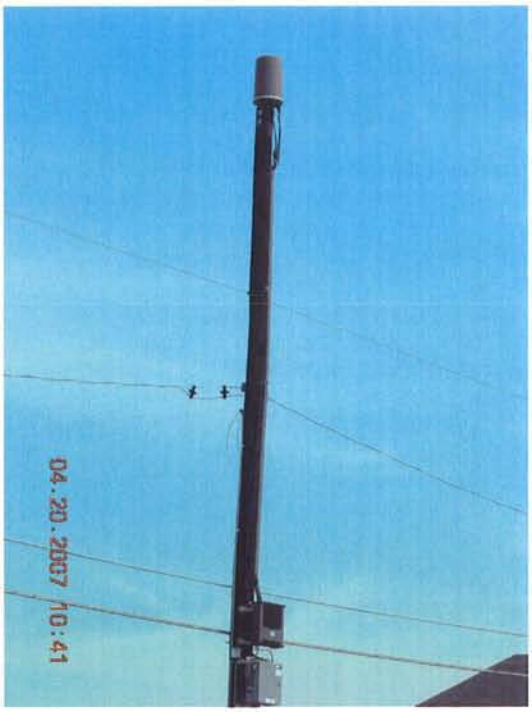
NOTE:

1. MAX. WEIGHT OF COMMUNICATION EQUIPMENT MOUNTED ON BRACKET ARM TO BE 15 LBS. WHEN INSTALLED ON EXISTING STREET LIGHT BRACKET ARM.
2. ONLY 1 PIECE OF COMMUNICATION EQUIPMENT CAN BE MOUNTED ON A STREET LIGHT POLE OR BRACKET ARM.
3. SUPPLY CABLE MUST BE JACKETED MULTIPLE CONDUCTOR. JACKET MUST ENCLOSE ENTIRE CABLE ASSEMBLY.
4. TO INSTALL MAINTAIN EQUIPMENT WORKERS MUST BE QUALIFIED TO WORK IN SUPPLY SPACE & USE SUPPLY WORK RULES & METHODS.
5. METAL ENCLOSURES SHALL BE BONDED TO STREET LIGHT MAST ARM BY AN APPROVED METHOD.

APPROVED BY ONCOR

ATTACHMENT 2

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